This is a digital copy of a book that was preserved for generations on library shelves before it was carefully scanned by Google as part of a project to make the world's books discoverable online.

It has survived long enough for the copyright to expire and the book to enter the public domain. A public domain book is one that was never subject to copyright or whose legal copyright term has expired. Whether a book is in the public domain may vary country to country. Public domain books are our gateways to the past, representing a wealth of history, culture and knowledge that's often difficult to discover.

Marks, notations and other marginalia present in the original volume will appear in this file - a reminder of this book's long journey from the publisher to a library and finally to you.

Usage guidelines

Google is proud to partner with libraries to digitize public domain materials and make them widely accessible. Public domain books belong to the public and we are merely their custodians. Nevertheless, this work is expensive, so in order to keep providing this resource, we have taken steps to prevent abuse by commercial parties, including placing technical restrictions on automated querying.

We also ask that you:

+ *Make non-commercial use of the files* We designed Google Book Search for use by individuals, and we request that you use these files for personal, non-commercial purposes.

+ *Refrain from automated querying* Do not send automated queries of any sort to Google's system: If you are conducting research on machine translation, optical character recognition or other areas where access to a large amount of text is helpful, please contact us. We encourage the use of public domain materials for these purposes and may be able to help.

+ *Maintain attribution* The Google "watermark" you see on each file is essential for informing people about this project and helping them find additional materials through Google Book Search. Please do not remove it.

+ *Keep it legal* Whatever your use, remember that you are responsible for ensuring that what you are doing is legal. Do not assume that just because we believe a book is in the public domain for users in the United States, that the work is also in the public domain for users in other countries. Whether a book is still in copyright varies from country to country, and we can't offer guidance on whether any specific use of any specific book is allowed. Please do not assume that a book's appearance in Google Book Search means it can be used in any manner anywhere in the world. Copyright infringement liability can be quite severe.

About Google Book Search

Google's mission is to organize the world's information and to make it universally accessible and useful. Google Book Search helps readers discover the world's books while helping authors and publishers reach new audiences. You can search through the full text of this book on the web at `http://books.google.com/`

HDI
HL 5020 Q

Digitized by Google

INDIA

3105 1016

HARVARD LAW LIBRARY.

Received Dec. 7, 1904.

Digitized by Google

With Author's Compliments

for the favour of Review

66

Digitized by Google

Digitized by Google

DIGEST OF CASES

REPORTED IN

THE INDIAN LAW REPORTS,

By the same Author.

DIGEST OF THE BOMBAY HIGH COURT REPORTS, Vols. 1 to 12; and INDIAN LAW REPORTS, BOMBAY SERIES, Vols. 1 and 2, Price Rs. 15.

To be had of the "Times of India," Bombay;
Messrs. Thacker, Spink & Co., Calcutta; and
Messrs. Higginbotham & Co., Madras.

DIGEST OF ALL THE CASES RELATING TO INDIA DECIDED BY THE PRIVY COUNCIL AND OTHER COURTS IN ENGLAND. Price Rs. 20.

To be had of the Superintendent, Education Society's Press, Byculla;
The Manager, "Times of India," Bombay;
Messrs. Thacker, Spink & Co., Calcutta; and
Messrs. Higginbotham & Co., Madras.

Vol. II.—DIGEST OF INDIAN LAW REPORTS AND LAW REPORTS INDIAN APPEALS—Price Rs. 20.

To be had at the Education Society's Press, Byculla.

Vol. III.—NOW IN THE PRESS. Orders are being registered at the EDUCATION SOCIETY'S PRESS, BYCULLA.

Bombay:
PRINTED AND PUBLISHED AT THE
EDUCATION SOCIETY'S PRESS, BYCULLA.

1884.

Digitized by Google

Digitized by Google

DIGEST OF CASES

REPORTED IN

THE INDIAN LAW REPORTS,

CALCUTTA SERIES, Vols. 1 to 4; BOMBAY SERIES, Vols. 1 to 3;
ALLAHABAD SERIES, Vols. 1 & 2; MADRAS SERIES, Vols. 1 & 2;

AND

LAW REPORTS, INDIAN APPEALS,

VOLS. 1 TO 6.

COMPILED BY

REGINALD M. A. BRANSON,

OF THE MIDDLE TEMPLE, BARRISTER-AT-LAW.

VOL. I.

SECOND EDITION.

Bombay:

PRINTED AND PUBLISHED AT THE

EDUCATION SOCIETY'S PRESS, BYCULLA.

1884.

Digitized by Google

Rec. Dec. 7. 1904

Digitized by Google

INDEX OF CASES.

Name of Case.	Volume and Page.	Column of Digest.
A.		
Abadi Begam v. Asa Ram	I. L. R. II. All. 162	350
Abadi Begam v. Inam Begam	I. L. R. I. All. 521	951
Abasi v. Dunne	I. L. R. I. All. 598	949
Abba Haji Ishmail v. Abba Thara	I. L. R. I. Bom. 253	167
Abdool Bari v. Ramdass Coondoo	I. L. R. IV. Cal. 607	30
Abdool Hamed, *In re*	I. L. R. IV. Cal. 94	772
Abdool Aziz v. Wali Khan	I. L. R. I. All. 338	58
Abdul Karim v. Manji Hansraj	I. L R. I. Bom. 295	865, 1062
Abdul Azeez v. Dorab Ally Khan ...	L. R. V. Ind. App. 116 I. L. R. III. Cal. 806 II. Cal. Rep. 529	1393
Abdul Rahim v. Racha Rai	I. L. R. I. All. 363	1289
Abdul Samad v. Rajindro Kishor Singh ...	I. L. R. II. All. 357	121
Abedonissa Khatoon v. Ameeroonissa Khatoon	L. R. IV. Ind. App. 66 I. L. R. II. Cal. 327	531
Abhassi Begum v. Moharanee Rajroop Koonwar.	I. L. R. IV. Cal. 33	1025
Ablakh Rai v. Udit Narain Rai	I. L. R. I. All. 353	1308
Ablakh Rai v. Salim Ahmad Khan	I. L. R. II. All. 437	555
Abul Munsoor v. Abdool Hamid...	I. L. R. II. Cal. 98	890
Adhiranee Narain Coomary v. Shona Malee Pat Mahadai	I. L. R. I. Cal. 365	637
Administrator-General of Bengal (The) v. Juggeswar Roy	I. L. R. III. Call. 192	707
Administrator-General of Bengal v. Apcar ...	I. L. R. III. Cal. 553	1502
Administrator-General v. Hawkins	I. L. R. I. Mad. 267	1459
Adurmoni Deyi v. Chowdhry Sib Narain Kur ...	I. L. R. III. Cal. 1	1067
Advocate-General of Bengal v. Mayor of Lyons.	L. R. III. Ind. App. 32	1512
Afatoola Sirdar v. Dwarka Nath Moitry	I. L. R. IV. Cal. 814 IV. Cal. Rep. 95	179
Afzal-un-nissa v. Tej Ban...	I. L. R. I. All. 725	480
Agra Savings Bank, Limited, v. Sri Ram Mitter.	I. L. R. I. All. 388	35
Ahmed Bakhsh v. Gobindi	I. L. R. II. All. 216	1230
Ahmed Mahomed Pattel v. Adjen Dooply ...	I. L. R. II. Cal. 323	896
Ahmedabad Municipality v. Mahamad Jamal ...	I. L. R. III. Bom. 146	1442
Ahamudeen v. Grish Chunder Shamunt... ...	I. L. R. IV. Cal. 350	336
Ajnasi Kuar v. Suraj Prasad	I. L. R. I. All. 501	242
Akbar Khan v. Sheoratan	I. L. R. I. All. 373	410
Akhe Ram v. Nand Kishore	I. L. R. I. All. 236	1345
Akilandammal v. Periasami Pillai	I. L. R. I. Mad. 309	891
Ali Muhammad v. Lalta Bakhsh...	I. L. R. I. All. 655	1028
Ali Muhammad v. Taj Muhammad	I. L. R. I. All. 283	1157
Ali Shah v. Husain Bakhsh	I. L. R. I. All. 588	1270

Digitized by Google

Name of Case.	Volume and Page.	Column of Digest.
Allumuddy v. Braham	I. L. R. IV. Cal. 140	965
Altaf Ali v. Lalji Mal	I. L. R. I. All. 518	976
Alukmonee Dabee v. Banee Madhub Chuckerbutty	I. L. R. IV. Cal. 677	1358
Ambika Dab v. Sukhmani Kuar...	I. L. R. I. All. 437	657
Ameeroonissa Khatoon v. Abedoonissa Khatoon	L. R. II. Ind. App. 87; IV. 66	949
Anakaran Kasmi v. Saidmadath Avulla	I. L. R. II. Mad. 79	1411
Anandaji Visram v. The Nariad Spinning and Weaving Company	I. L. R. I. Bom. 320	86
Anandrav Bapuji v. Shekh Baba	I. L. R. II. Bom. 562	1274
Anant Das v. Ashburner and Co...	I. L. R. I. All 267	319
Ananta v. Ramabai	I. L. R. I. Bom. 554	611
Annath Nath Deb v. Bistu Chunder Roy ...	I. L. R. IV. Cal. 783	484
Annapurnabai, *In re*	I. L. R. I. Bom. 630	373
Annoda Churn Roy v. Kally Coomar Roy ...	I. L. R. IV. Cal. 89	814
Anonymous...	I. L. R. III. Cal. 767	1484
	I. L. R. I. Mad. 133	1416
	Do. 55	351
	Do. 305	379
	Do. 54	475
	Do. 56	1496
Antoo Misree v. Bidhoomookhee	I. L. R. IV. Cal. 605	528
Apaji Bhivrav v. Shivlal Khubchand	I. L. R. III. Bom. 204	829, 1450
Apaji Chintaman Devdhar v. Gangabai... ...	I. L. R. II. Bom. 632	649, 1399
Apaya v. Rama	I. L. R. III. Bom. 210	750
Appasami v. Aghilanda	I. L. R. II. Mad. 113	875
Apu Budgavda v. Narhari Annajee	I. L. R. III. Bom. 21	819
Ardesir Nasarvanji v. Muse Natha Amiji ...	I. L. R. I. Bom. 601	191
Arfunnessa v. Peary Mohun Mookerjee... ...	I. L. R. I. Cal. 378	1062
Ashgar Ali v. Delroos Banoo Begum	I. L. R. III. Cal. 324	1078
Ashutosh Dutt v. Doorga Churn Chatterjee ...	L. R. VI. Ind. App. 182	686
Assamathem Nessa Bibee v. Roy Lutchmeeput Singh	I. L. R. IV. Cal. 142	941
Attorneys, *In the matter of the Petition of the*...	I. L. R. I. Mad. 24	1334
Audh Kumari v. Chandra Dai	I. L. R. II. All. 561	620
Aumirtolall Bose v. Rajoneekant Mitter ...	L. R. II. Ind. App. 113	72, 619, 620, 868
Aurokiam, *In the matter of*	I. L. R. II. Mad. 38	366
B.		
Babaji v. Nana	I. L. R. I. Bom. 535, n.	417
Babaji and Nanaji v. Narayan	I. L. R. III. Bom. 340	307, 981, 1141, 1384
Babaji Hari v. Rajaram Ballal	I. L. R. I. Bom. 75	1092, 1106
Babaji Lakshman v. Vasudev Vinayek	I. L. R. I. Bom. 95	674
Babaji Mahadaji v. Krishnaji Devji	I. L. R. II. Bom. 666	600
Baban Mayacha v. Nagu Shravucha	I. L. R. II. Bom. 19	773, 1252, 1301
Baboo Doorga Pershad v. Mussumat Kundun Koowar	L. R. I. Ind. App. 55	658
Baboo Lekraj Roy v. Kanhya Singh ...	L. R. I. Ind. App. 317	135, 567
	I. L. R. III. Cal. 210	
	L. R. IV. Ind. App. 223	

Digitized by Google

Name of Case.	Volume and Page.		Column of Digest.
Babshetti v. Venkataramana	I. L. R. III. Bom.	154	986, 1407
Badan Bebajea v. Kala Chand Bebajea	I. L. R. IV. Cal.	823	536
Badri Prasad v. Muhammad Yusuf	I. L. R. I. All.	381	246
Bhana Nahana v. Parbhu Hari	I. L. R. II. Bom.	67	604
Bai Mahkor v. Bulakhi Chaku	I. L. R. I. Bom.	538	112, 416, 780, 1280
Baij Nath v. Mahabir	I. L. R. I. All.	608	621
Baijoo Lall, *In the matter of the Petition of* ...	I. L. R. I. Cal.	450	377
Baijun Doobey v. Brij Bhookun Lall Awusti ...	I. L. R. I. Cal. L. R. II. Ind. App.	133 275	1110
Bakhat Ram v. Wazir Ali	I. L. R. I. All.	448	53
Balaji Baikaji Pinge v. Gopal bin Raghu Kuli	I. L. R. III. Bom.	23	475
Baldeo Das v. Sham Lal	I. L. R. I. All.	77	673
Baldeo Pandey v. Gokul Rai	I. L. R. I. All.	603	742
Baldeo Sahai v. Bateshar Singh...	I. L. R. I. All.	75	1267
Balkrishna v. Lakshman	I. L. R. III. Bom.	219	171
Balkrishna Bhalchandra v. Gopal Raghunath...	I. L. R. I. Bom.	73	632
Balkrishna Trimback Tendulkar v. Savitribai...	I. L. R. III. Bom.	54	661
Ball v. Stowell	I. L. R. II. All.	322	872
Ballabh Das v. Sundar Das	I. L. R. I. All.	429	614
Balwant Singh v. Gokaran Prasad	I. L. R. I. All.	433	1347
Bam v. Survey Commissioner and Collector of Ratnagiri...	I. L. R. III. Bom.	134	476
Banapa v. Sundardas Jagjivandas	I. L. R. I. Bom.	333	504
Bank of Hindustan, China, and Japan v. Shoroshibala Debee	I. L. R. II. Cal.	311	1013
Bannoo v. Kassee Ram	I. L. R. III. Cal.	315	673
Bapuji Apaji v. Senavaraji Marvadi	I. L. R. II. Bom.	231	1339
Barkat-ul-lah Khan v. Rennie	I. L. R. I. All.	17	1370
Basant Ram v. Kolahal	I. L. R. I. All.	392	1181
Basant Rai v. Kanauji Lal...	I. L. R. II. All.	455	1023
Basapa v. Maraya...	I. L. R. III. Bom.	433	917
Basawa and Gurbasawa v. Kalkapa, Sharbana, and Sidoji	I. L. R. II. Bom.	489	1226
Basappa bin Malappa Aki v. Dundaya bin Shivlingaya	I. L. R. II. Bom.	540	1360
Basapa bin Murtiapa v. Lakshmanapa bin Maretamapa	I. L. R. I. Bom.	624	192
Bazayet Hossein v. Dooli Chund...	I. L. R. IV. Cal.	402	952
Beresford v. Hurst...	I. L. R. I. All.	772	967
Behari Lal v. Salik Ram	I. L. R. I. All.	675	908
Behary Lall Sandyal v. Juggomohun Gossain ...	I. L. R. IV. Cal.	1	1175
Bejoy Chunder Banerjee v. Kally Prosonno Mookerjee	I. L. R. IV. Cal.	327	569
Bemolasoondury Chowdhrain v. Punchanun Chowdhry	I. L. R. III. Cal.	705	204, 1266
Beresford v. Hurst...	I. L. R. I. All.	772	907
Bhagirath v. Naubat Singh	I. L. R. II. All.	115	1006
Bhagirthibai v. Radhabai...	I. L. R. III. Bom.	298	585
Bhagvandas Kishordas v. Abdul Husein Mahomed Ali...	I. L. R. III. Bom.	49	164, 1414

Digitized by Google

Name of Case.	Volume and Page.	Column of Digest.
Bhagavan Dullabh v. Kala Shankar	I. L. R. I. Bom. 641	685
Bhagbutti Deyi v. Bholanath Thakoor ...	I. L. R. I. Cal. 104 L. R. II. Ind. App. 256	602
Bhago Bibee v. Ram Kant Roy Chowdhry ...	I. L. R. 1. Cal. 293	1337
Bhagvan Chunder Dass v. Sudder Ally...	I. L. R. IV. Cal. 41 II. Cal. Rep. 357	185
Bhagwandas Kishordas v. Abdul Husein Mahomed Ali	I. L. R. III. Bom. 49	163
Bhagvan Singh v. Murli Singh	I. L. R. I. All. 459	53
Bhagwanti v. Rudr Man Tiwari...	I. L. R. II. All. 145	54
Bhala Nahana v. Parbhu Hari	I. L. R. II. Bom. 67	591
Bhaskarappa v. The Collector of North Kanara...	I. L. R. III. Bom. 452	804
Bhawan Mulji v. Kavasji Jahangir Jasawala and Perosha Merwanji	I. L. R. II. Bom. 542	731
Bhawani v. Mahtab Kuar...	I. L. R. II. All. 171	611
Bhawani Kuar v. Rikni Ram	I. L. R. II. All. 354	872
Bheeka Lall v. Bhuggoo Lall	I. L. R. III. Cal. 23	1264
Bheknarain Singh v. Januk Singh	I. L. R. II. Cal. 438	1066
Bhichuk Singh v. Nageshar Nath	I. L. R. II. All 112	36
Bhikaji Sabaji v. Bapu Saju	I. L. R. I. Bom. 550	280
Bhikam Das v. Pura	I. L. R. II. All. 141	594
Bhikhan Khan v. Ratan Kuar	I. L. R. I. All. 512	55, 56
Bhimul Doss v. Choonee Lall	I. L. R. II. Cal. 379	626
Bhola Nath v. Baldeo	I. L. R. II. All. 198	1232, 1237
Bhoobuneshwar Dutt, *In the matter of*... ...	I. L. R. III. Cal. 621	1097
Bhoobun Chunder Sen v. Ram Soonder Surma Mozoomdar	I. L. R. III. Cal. 300	1337
Bhoobun Mohun Debya v. Hurrish Chunder Chowdhry	I. L. R. IV. Cal. 23 L. R. V. Ind. App. 138	570
Bhugeeruth Berah v. Moneeram Banerjee ...	I. L. R. IV. Cal. 855	1365
Bhuggobutty Dossee v. Shamachurn Bose ...	I. L. R. I. Cal. 337	1395
Bhupal v. Jag Ram...	I. L. R. II. All. 449	1022
Bhyrub Chunder Bundopadhya v. Soudamini Dabee	I. L. R. II. Cal. 141	1344
Bhyrub Chunder v. Golab Coomary	I. L. R. III. Cal. 517	113
Biddomoye Dabee Dabee v. Sittaram...	I. L. R. IV. Cal. 497 III. Cal. Rep. 398	325
Bijai Ram v. Kallu	I. L. R. I. All. 592	889
Binda Prasad v. Ahmad Ali	I. L. R. I. All. 368	527
Binda Prasad v. Madho Prasad	I. L. R. II. All. 129	426
Birchunder Manickya v. Hurrish Chunder Dass	I. L. R. III. Cal. 383	760, 1259
Bishan Dial v. Manni Ram	I. L. R. I. All. 297	1014
Bishan Chand v. Ahmad Khan	I. L. R. I. All. 263	860
Bisheshar Singh v. Sugundhi	I. L. R. I. All. 366	56
Bisheswari Debya v. Govind Persad Tewari ...	L. R. III. Ind. App. 194	1113
Bish Nath, *In the matter of the Petition of* ...	I. L. R. I. All. 318	1234
Bissessur Lall Sahoo v. Maharajah Luchmessur Singh	L. R. VI. Ind. App. 233	534, 675
Bittan, *In the matter of*	I. L. R. II. Cal. 357	572
Bollye Satu v. Akram Ally	I. L. R. IV. Cal. 961	1310

Digitized by Google

Name of Case.	Volume and Page.		Column of Digest.
Bombay Burmah Trading Corporation, Limited, v. Mirza Mahomed Ally and The Burmah Company, Limited	L. R. V. Ind. App.	130	1160
	I. L. R. IV. Cal.	116	
Bonomali Bajadur v. Koylash Chunder Mozoomdar	I. L. R. IV. Cal.	185	814
Bonomalee Nag v. Koylash Chunder Dey ...	I. L. R. IV. Cal.	692	484
Boonjad Mathoor v. Nathoo Shahoo... ...	I. L. R. III. Cal.	375	148
Boydonath Bag v. Grish Chunder Roy ...	I. L. R. III. Cal.	26	337
Boyle Chund Singh v. Maulard	I. L. R. IV. Cal.	572	97, 1455
Brammoye Dassee v. Kristo Mohun Mookerjee	I. L. R. II. Cal.	222	1262
Brijnath Dass v. Juggernath Dass	I. L. R. IV. Cal.	742	1029
Brij Indar Bahadur Singh v. Ranee Janki Koer.—Lal Shunkur Bux v. Ranee Janki Koer.—Lal Setla Bux v. Ranee Janki Koer	L. R. V. Ind. App.	1	48
	I. Cal. Rep.	318	
Brindabun Chunder Dey Chowdhry v. Brindabun Chunder Sircar Chowdhry	L. R. I. Ind. App.	178	1200
Brojender Coomar v. Bromomoye Chowdhrain...	I. L. R. IV. Cal.	885	1415
Brojendro Coomar Ray v. Rakhal Chunder Roy.	I. L. R. III. Cal.	791	862
Brojo Kishore Singh v. Bharrut Sing Mohaputter	I. L. R. IV. Cal.	963	1437
Bungseedhur Khettry, *In the matter of*	I. L. R. II. Cal.	359	732
Bunwaree Lall Sahoo v. Mohabeer Proshad Singh...	L. R. I. Ind. App.	89	29
	XII. Beng. L. R.	29	
Burmah Trading Corporation, Limited, v. Mirza Mahomed Ally Sherazee and The Burmah Company, Limited	I. L. R. IV. Cal.	116	395
	L. R. V. Ind. App.	130	
Bussun Lall Shookul v. Chundee Dass ...	I. L. R. IV. Cal.	686	1260
Byjnath Lall v. Ramooden Chowdhry ...	L. R. I. Ind. App.	106	1007
	XXI. W. R.	233	
Byraddi Subbareddi v. Dasappa Rau	I. L. R. I. Mad.	403	141
C.			
Carvalho v. Nurbibi	I. L. R. III. Bom.	202	342, 426, 744
Cassum Jooma v. Thucker Liladhar Kessowjee.	I. L. R. II. Bom.	570	1403
Chadami Lal v. Muhammad Bakhsh	I. L. R. I. All.	563	1152
Chamaili Kuar v. Rain Prasad	I. L. R. II. All.	267	601
Chamaili Rani v. Ram Dai	I. L. R. I. All.	552	346
Champabaty v. Bibi Jibun	I. L. R. IV Cal.	213	1415
Chandu v. Chathu Nambiar	I. L. R. I. Mad.	381	411
Chatur Jagsi v. Tulsi	I. L. R. II. Bom.	230	885
Chemminikara Muppil Nair v. Kiliyanat Ukona Menon	I. L. R. I. Mad.	88	959
Chedambara Chetty v. Renga Krishna Muthu Vira Puchaiya Naicker...	L. R. I. Ind. App.	241	226
	XIII. Beng. L. R.	509	
	XXII. W. R.	148	
Chidambaram Chettiar v. Gouri Nachiar.	I. L. R. II. Mad.	83	660
	L. R. VI. Ind. App.	177	
Chin Hong & Co. v. Seng Moh & Co. ...	I. L. R. IV. Cal.	736	190
	III. Cal. Rep.	585	
Chinna Nagayya v. Pedda Nagayya	I. L. R. I. Mad.	62	584
Chinna Subbaraya Mudali v. Kundaswami Reddi.	I. L. R. I. Mad.	59	731

Digitized by Google

Name of Case.	Volume and Page.	Column of Digest.
Chinna Ummayi v. Tesgarai Chetti	I. L. R. I. Mad. 168	702
Chinnimarigadu, *In the matter of*	I. L. R. I. Mad. 289	352
Chinto Abaji Kulkarni v. Lakshmibai kom Sakharam Antaji...	I. L. R. II. Bom. 375	416
Chinto Joshi v. Krishnaji Narayan	I. L. R. III. Bom. 214	113
Chokalingapeshana Naicker v. Achiyar... ...	I. L. R. I. Mad. 40	406
Chotay Lall v. Chunnoo Lall	I. L. R. IV. Cal. 744 L. R. IV. Ind. App. 15	620, 752
Chova Kara v. Isa bin Khalifa	I. L. R. I. Bom. 209	1486
Chowdry Chintamun Sing v. Mussamut Nowlukho Konwari	L. R. II. Ind. App. 236	149, 627
Chowdhri Murtaza Hossein v. Mussamut Bibi Bechunnissa	L. R. III. Ind. App. 209	149
Chummun Shah, *In the matter of* ...	I. L. R. III. Cal. 756 II. Cal. Rep. 317	371, 503
Chunder Caunt Mookerjee v. Jodoonath Khan...	I. L. R. III. Cal. 468	1455
Chunder Coomar Roy v. Bhogobutty Prosonno Roy	I. L. R. III. Cal. 235	909
Chunder Mohun Roy v. Bhubon Mohini Dabea..	I. L. R. II. Cal. 389	880
Chunder Narain v. Farquharson...	I. L. R. IV. Cal. 837	884
Chunder Nath Sen, *In the matter of the Petition of*	I. L. R. II. Cal. 293	1421
Chunder Nath Chowdhry v. Tirthanund Thakoor	I. L. R. III. Cal. 504	895
Chunder Sekhur Mookerjee v. The Collector of Midnapore	I. L. R. III. Cal. 464	1410
Chunni v. Thakur Das	I. L. R. I. All. 126	1015
Chunia v. Ram Dial	I. L. R. I. All. 360	345, 348
Chunilal Sobharam v. Purbhudas Kursandas ...	I. L. R. II. Bom. 560	260
Chutterdharee Lall v. Rambelashee Koer ...	I. L. R. III. Cal. 318	1376
Cohen v. Cassim Nana	I. L. R. I. Cal. 264	395
Collector of Moradabad v. Muhammad Daim Khan	I. L. R. II. All. 196	1154
Collector of Sea Customs v. Punniar Chitham-baram	I. L. R. I. Mad. 89	26, 776, 1272
Collector of Thana v. Bal Patel	I. L. R. II. Bom. 110	1301
Collector of Thana v. Dadabhai Bomanji ...	I. L. R. I. Bom. 352	195, 345
Collector of Trichinopoly v. Lekkamani ...	L. R. I. Ind. App. 282, 293	632, 1118
Collins v. Maula Baksh	I. L. R. II. All. 284	535
Collis v. Manohar Das	I. L. R. I. All. 745	120
Coringa Oil Company v. Koegler...	I. L. R. I. Cal. 466	319
Corporation of Calcutta v. Bheecunram Napit...	I. L. R. II. Cal. 290	576
Crosthwaite v. Hamilton	I. L. R. I. All. 87	1162
Court of Wards v. Gaya Prasad	I. L. R. II. All. 107	1084, 1344
Cowasjee Nanabhoy v. Lallbhoy Vullubhoy	L. R. III. Ind. App. 200 I. L. R. I. Bom. 468	284

D.

D. R. Bam v. The Survey Commissioner and the Collector of Ratnagiri	I. L. R. III. Bom. 134	476
Daia Chand v. Sarfraz	I. L. R. I. All. 117	16
Daia Chand v. Sarfraz Ali...	I. L. R. I. All. 425	17
Dalip Singh v. Durga Prasad	I. L. R. I. All. 442	1230

Digitized by Google

Name of Case.	Volume and Page.	Column of Digest.
Dalpatbhai Bhagubhai v. Amarsang Khema Bhai	I. L. R. II. Bom. 553	255, 261
Damodhar Gordhan v. Deoram Kanji ...	L. R. III. Ind. App. 102 I. L. R. I. Bom. 367 L. R. App. Ca. 332	224
Damodar Parsotam v. Ishvar Jetha ...	I. L. R. III. Bom. 89	202
Darbhha Venkamma v. Rama Subbarayadu ...	I. L. R. I. Mad. 387	1121
Darbo v. Kesho Rai	I. L. R. II. All. 356	237
Darshan Singh v. Hanmanta	I. L. R. I. All. 274	1230
Daudsha v. Ismalsha	I. L. R. III. Bom. 72	789
Dayal Jairaj v. Jivraj Ratansi	I. L. R. I. Bom. 237	478
Dayal Mistree v. Kupoorchand	I. L. R. IV. Cal. 318	759
Debendronath Mullick v. Odit Churn Mullick...	I. L. R. III. Cal. 390	1325
Debi Dutt Sahoo v. Subodra Bibee	I. L. R. II. Cal. 283	1026
Debi Prasad v. Thakur Dial	I. L. R. I. All. 105	618
Debi Singh v. Bhup Singh	I. L. R. I. All. 709	1116
Deen Doyal Lall v. Het Narain Singh	I. L. R. II. Cal. 41	741
Deendyal Lal v. Jugdeep Narain Singh...	L. R. IV. Ind. App. 247 I. L. R. III. Cal. 198	672
Deen Doyal Poramanick v. Kylas Chunder Pal Chowdhry	I. L. R. I. Cal. 92	743
Delhi and London Bank, Limited, v. Orchard.	L. R. IV. Ind. App. 127 I. L. R. III. Cal. 47	304, 879, 1252, 1439
Delhi and London Bank v. Wordie	I. L. R. I Cal. 249	1261
Denobundhoo Chowdhry v. Kristomonee Dossee.	I. L. R. II. Cal. 152	1014
Deojit v. Pitambar...	I. L. R. I. All. 275	1014
Deoram Kanji v. Damodhar Gordhan ...	L. R. III. Ind. App. 102 L. R. I. App. Ca. 332 I. L. R. I. Bom. 367	221
Desputty Singh, *In the matter of the Petition of*	I. L. R. II. Cal 208	1177
Dessai Kallianraiji Hekoomutraiji v. Maharana Fattehsangji Jaswatsangji	L. R. I. Ind. App. 34 H. C. R. X. Bom. 281	1461
Devrav Krishna v. Halambhai	I. L. R. I. Bom. 87	1252
Dhanjibhai Bomanji Gujrat v. Navazbai ...	I. L. R. II. Bom. 75	39, 68, 608, 966
Dhondu Gurav v. Gangabai	I. L. R. III. Bom. 369	629
Dhonender Chunder Mookerjee v. Mutty Lal Mookerjee	L. R. II. Ind. App. 18	1198
Dhonessur Kooer v. Roy Gooder Sahoy ...	I. L. R. II. Cal. 336	909
Dhuronidhur Sen v. The Agra Bank, Limited ...	I. L. R. IV. Cal. 380	678
Dijahur Dutt, *In the matter of the Petition of* ...	I. L. R. IV. Cal. 647	362
Dildhar Hossein v. Mujeedunnissa	I. L. R. IV. Cal. 629	241
Dinanath Abaji v. Sadashiv Hari Madhave ...	I. L. R. III. Bom. 9	1329
Dirgaj Singh v. Debi Singh	I. L. R. I. All. 499	182
Doolar Chand Sahoo v. Lalla Bisheshur Dyal ...	L. R. VI. Ind. App. 47	530
Doolar Chand Sahoo v. Lalla Chabeel Chand ...	L. R. VI. Ind App. 47	
Dooli Chand v. Syud Bazayet Hossein	L. R. V. Ind. App. 211	952
Doorga Persad Singh v. Doorga Konwari	L. R. V. Ind. App. 190 I. L. R. IV. Cal. 190	410, 616
Doorga Proshad Mytse v. Joynarain Hazra ...	I. L. R. IV. Cal. 96	336
Doorga Proshad Mytee v. Joynarain Hazrah ...	I. L. R. II. Cal. 474	474

Digitized by Google

Name of Case.	Volume and Page.	Column of Digest.
Dorab Ally Khan v. The Executors of Khajah Moheeooddeen	I. L. R. III. Cal. 806 L. R. V. Ind. App. 116	1392
Dorab Ally Khan v. Abdool Azeez	I. L. R. IV. Cal. 229	1214, 1393
Dorab Ally Khan v. Khajah Moheeoodeen ...	I. L. R. I. Cal. 55	1392
Doss Money Dossee v. Jonmenjoy Mullick ...	I. L. R. III. Cal. 363	1265
Dubey Sahai v. Ganeshi Lall	I. L. R. I. All. 84	1457
Dukharam Bharti v. Luchman Bharti ...	I. L. R. IV. Cal. 549 IV. Cal. Rep. 49	216
Dular Chand v. Balram Das	I. L. R. I. All. 458	1084
Dulsook Rattanchand v. Chugan Narrun ...	I. L. R. II. Bom. 356	902
Durga Prasad v. Asa Ram	I. L. R. II. All. 186	874
Durga Prasad v. Nawazish Ali	I. L. R. I. All. 591	98
Durga Prasad v. Khairati	I. L. R. I. All. 545	138
Dwarka Das v. Husain Bakhsh	I. L. R. I. All. 564	1152
Dwarka Nath Misser v. Hurrish Chunder ...	I. L. R. IV. Cal. 925	1309
Dwarkanath Bysack v. Burroda Persaud Bysack	I. L. R. IV. Cal. 448	1507
Dyebukee Nundun Sen v. Madhoo Mutty Goopta	I. L. R. I. Cal. 128	1402
E.		
East India Railway Company v. The Bengal Coal Company	I. L. R. I. Cal. 95	1438
Ebrahim v. Fuckhrunnissa Begum	I. L. R. IV. Cal. 531	830
Ede v. Kanto Nath Shaw...	I. L. R. III. Cal. 220	95
Eidan v. Mazhar Husain	I. L. R. I. All. 483	945
Ekram Mundul v. Holodhur Pal...	I. L. R. III. Cal. 271	474, 1260
Elahi Buksh v. Marachow	I. L. R. IV. Cal. 825 III. Cal. Rep. 593	120
Ellem v. Basheer	I. L. R. I. Cal. 184	1287
Elliott, *In the Goods of*	I. L. R. IV. Cal. 106 II. Cal. Rep. 490	453
Empress v. Abdool Karim	I. L. R. IV. Cal. 10 III. Cal. Rep. 81	5, 1446
Empress v. Abul Hasan	I. L. R. I. All. 497	1098
Empress v. Acharjys	I. L. R. I. Mad. 224	1100
Empress v. Achiraj Lall	I. L. R. IV. Cal. 603 III. Cal. Rep. 87	355
Empress v. Ambigara Hulagu	I. L. R. I. Mad. 163	499
Empress v. Amiruddeen	I. L. R. III. Cal. 412	1099
Empress v. Ashgar Ali	I. L. R. II. All. 260	498
Empress v. Ashootosh Chuckerbutty	I. L. R. IV. Cal. 483	498
Empress v. Baidanath Das	I. L. R. III. Cal. 366	359
Empress v. Baldeo Sahai...	I. L. R. II. All. 253	165, 1143
Empress v. Banni	I. L. R. II. All. 349	334
Empress v. Bhawani	I. L. R. I. All. 664	499
Empress v. Bhup Singh	I. L. R. II. All. 570	1295
Empress v. Budh Singh	I. L. R. II. All. 101	376, 385
Empress v. Brojonath Dey	I. L. R. II. Cal. 425	173
Empress v. Burah	I. L. R. IV. Cal. 172	824, 825
Empress v. Burah	I. L. R. III. Cal. 63	823
Empress v. Butto Kristo Doss	I. L. R. III. Cal. 497	1189
Empress v. Charn Nayiak	I. L. R. II. Cal. 354	385

Digitized by Google

Name of Case.	Volume and Page.		Column of Digest.
Empress v. Chattar Singh	I. L. R. II. All.	33	1086
Empress v. Darba	I. L. R. I. All.	461	870
Empress v. Dedar Sircar	I. L. R. II. Cal.	384	1377
Empress v. Dharam Das	I. L. R. I. All.	655	700
Empress v. Diljour Misser	I. L. R. II. Cal.	225	1054, 1294
Empress v. Donnelly	I. L. R. II. Cal.	495	366, 506
Empress v. Dononjoy Broj	I. L. R. III. Cal.	540	376
Empress v. Dossaji Gulam Husein	I. L. R. III. Bom.	334	1054
Empress v. Dwarkanath Chowdhry	I. L. R. II. Cal.	399	366, 1414
Empress v. Fox	I. L. R. II. All.	522	1100, 1491
Empress v. Futteh Jyab Khan	I. L. R. IV. Cal.	570	778
Empress v Gangadhar Bhunjo	I. L. R. III. Cal.	622	1181
Empress v. Gauraj	I. L. R. II. All.	444	498
Empress v. Halodhur Poroe	I. L. R. II. Cal.	383	1099
Empress v. Harai Mirdha and Umed Sardar ...	I. L. R. III. Cal.	189	360
Empress v. Hary Doyal Karmokar	I. L. R. IV. Cal.	16	1294
Empress v. Hematulla	I. L. R. III. Cal.	389	358
Empress v. Irad Ally	I. L. R. IV. Cal.	869	1370
Empress v. Jogessur Mochi	I. L. R. III. Cal.	380	565
Empress v. Joy Hari Kor.....	I. L. R. II. Cal.	356	932
Empress v. Judbonath Gangooly...	I. L. R. II. Cal.	273	130
Empress v. Jyadulla	I. L. R. II. Cal.	436	130
Empress v. Kampta Prasad	I. L. R. I. All.	530	1097
Empress v. Kanchan Singh	I. L. R. I. All.	413	1385
Empress v. Karan Singh...	I. L. R. I. All.	680	1447
Empress v. Karim Bakhsh	I. L. R. II. All.	386	496
Empress v. Kashi	I. L. R. II. All.	447	358
Empress v. Kashmiri Lal	I. L. R. I. All.	625	379
Empress v. Ketabdi Mundul	I. L. R. IV. Cal.	764	388
Empress v. Kudrutoollah	I. L. R. III. Cal.	495	359
Empress v. Lachman Singh	I. L. R. II. All.	398	779
Empress v. Lalai	I. L. R. II. All.	301	1168
Empress v. Mahindra Lal...	I. L. R. I. All.	638	700
Empress v. Malka	I. L. R. II. Bom.	648	355
Empress v. Manyu...	I. L. R. II. All.	340	131
Empress v. Mannoo Tamoolee	I. L. R. IV. Cal.	696	501
Empress v. Megha...	I. L. R. I. All.	637	1096
Empress v. Miyaji Ahmed	I. L. R. III. Bom.	150	367
Empress v. Mohim Chunder Rai...	I. L. R. III. Cal.	765	1468
Empress v. Mohindra Lal...	I. L. R. I. All.	638	701
Empress v. Mula	I. L. R. II. All.	105	545
Empress v. Mulna...	I. L. R. I. All	599	1055
Empress v. The Municipal Corporation of the Town of Calcutta	I. L. R. III. Cal.	758	1035
Empress v. Murli	I. L. R. II. All.	336	369
Empress v. Nadua	I. L. R. II. All.	53	352
Empress v. Nipcha	I. L. R. IV. Cal.	712	357
Empress v. Nilambar Babu	I. L. R. II. All.	276	369, 374, 761
Empress v. Nobin Chunder Dutt	I. L. R. IV. Cal.	865	380
Empress v. Nurul Huq	I. L. R. III. Cal.	757	1210
Empress v. Partab...	I. L. R. I. All	666	1495

Digitized by Google

Name of Case.	Volume and Page.		Column of Digest.
Empress v. Projonath Dey	I. L. R. II. Cal.	425	173
Empress v. Rajcoomar Singh	I. L. R. III. Cal.	573	372, 796, 1423
Empress v. Raguba	I. L. R. II. All.	351	380
Empress v. Ramanyiya	I. L. R. II. Mad.	5	40, 356, 506
Empress v. Ram Chand	I. L. R. I. All.	675	498
Empress v. Ram Adhin	I. L. R. II. All.	139	1056
Empress v. Rama Birapa...	I.L. R. III. Bom.	12	497, 502
Empress v. Rameshar Rai...	I. L. R. I. All.	379	333
Empress v. Sabsukh	I. L. R. II. All.	533	1371
Empress v. Safatulla	I. L. R. IV. Cal.	815	1101
Empress v. Sahae Rae	I. L. R. III. Cal.	623	361, 571
Empress v. Salik	I. L. R. I. All.	527	1098
Empress v. Sarmukh Singh	I. L. R. II. All.	218	367, 1053
Empress v. Sashi Bhusan Chuckrabutty ...	I. L. R. IV. Cal.	623	355
Empress v. Seymour	I. L. R. I. All.	630	700
Empress v. Sukhari	I. L. R. II. All.	405	380
Empress v. Thacoor Dyal Singh	I. L. R. III. Cal.	320	381
Empress v. Thompson	I. L. R. II. All.	339	288
Empress v. Troylukho Nath Chowdhry	I. L. R. IV. Cal.	366	5
Empress v. Tsit Ooe	I. L. R. IV. Cal.	667	778
Empress v. Umsadbaksh	I. L. R. III. Bom.	178	790
Eravanni Revivarman v. Ittapu Revivarman ...	I. L. R. I. Mad.	153	960
Eshan Chunder Roy. v. Monmohini Dassi	I. L. R. IV. Cal.	638	1330

F.

Fakharoodeen Mahomed Ashan v. Pogose ...	I. L. R. IV. Cal.	209	895
Fakir Muhammad v. Gholam Husain ...	I. L. R. I. All.	580	906
Fakir Muhammad v. Tirumala Charriar ...	I. L. R. I. Mad.	205	1306
Farzand Ali v. Alim-ul-lah	I. L. R. I. All.	272	1148
Fateh Singh v. Sanwal Singh	I. L. R. I. All.	751	328
Fatima Begam v. Sakina Begam	I. L. R. I. All.	51	769
Fazal Haq v. Maha Chand	I. L. R. I. All.	557	1324
Fazal Muhammad v. Phul Kuar	I. L. R. II. All.	192	827
Feda Hossein, *In the matter of the Petition of.*	I. L. R. I. Cal.	431	62
Fehrsen v. Simpson	I. L. R. IV. Cal.	514	1508
Fernandez (D.) v. R. Alves	I. L. R. III. Bom.	382	714
Fleming v. Koegler	I. L. R. IV. Cal.	237	326
Fleming Spinning and Weaving Company (Limited), *In re*	I. L. R. III. Bom.	299	282
Forbes (C. H. B.) and others v. Tullockchand Manockchand and Shapurji Burjorji... ...	I. L. R. III. Bom.	386	316
Forester v. Secretary of State for India in Council	I. L. R. III. Cal.	161	745
	L. R. IV. Ind. App.	137	
Fowle v. Fowle	I. L. R. IV. Cal.	260	452
Framji Bezanji Dastur v. Hormasji Pestanji Framji	I. L. R. II. Bom.	258	1396
Fuckurodeen Mahomed Ashan v. Mohima Chunder Chowdhry	I. L. R. IV. Cal.	529	895
Furzund Hossein v. Janu Bibee	I. L. R. IV. Cal.	588	944, 1277
Futeek Paroee v. Mohender Nath Mozoomdar...	I. L. R. I. Cal.	385	342, 394

Digitized by Google

Name of Case.	Volume and Page.	Column of Digest.
G.		
Gabriel v. Mordakai	I. L. R. I. Cal. 148	714
Gadgeppa Desai v. Apaji Jivanrav	I. L. R. III. Bom. 237	832
Gajadhur Pershad v. The Two Widows of Emam Ali Beg	L. R. II. Ind. App. 520	1138
Gajapathi Nilamani v. Gajapathi Radhamani	I. L. R. I. Mad. 290 L. R. IV. Ind App. 212	630
Ganendro Mohun Tagore v. Rajah Juttendro Mohun Tagore	L. R. I. Ind. App. 387	1509
Ganga Bai v. Sita Ram	I. L. R. I. All. 170	641
Gangadhar Shivkaran v. The Collector of Ahmednagar...	I. L. R. I. Bom. 628	196, 780
Ganga Jati v. Ghasita	I. L. R. I. All. 48	610
Ganga Prasad v. Kusyari Din	I. L. R. I. All. 611	1076
Ganga Ram v. Bansi	I. L. R. II. All. 431	1237
Ganpat Pandurang v. Adarji Dadabhai... ...	I. L. R. III. Bom. 312	160
Ganpat Pataya v. The Collector of Kanara ...	I. L. R. I. Bom. 7	251
Ganpat Rai v. Sarupi	I. L. R. I. All. 446	1029
Ganpatgir Guru Bholagir v. Ganpatgir... ...	I. L. R. III. Bom. 230	415
Gasper, *In the Goods of*	I. L. R. III. Cal. 733	847
Gauri v. Chandramani	I. L. R. I. All. 262	675
Gauri Dat v. Gur Sahai	I. L. R. II. All. 41	1444
Gauri Shankar v. Mumtaz Ali Khan	I. L. R. II. All. 411	696
Gaya Prasad v. Bhup Singh	I. L. R. I. All. 180	234
Gehanji Kes Patil v. Ganpati Lakshman ...	I. L. R. II. Bom. 464	1324
Ghasi Ram v. Nuraj Begam	I. L. R. I. All. 31	827
Ghazi v. Kadir Bakhsh	I. L. R. I. All. 212	1343
Girdharee Lall v. Kantoo Lall	L. R. I. Ind. App. 321	595
Girdhari Singh v. Hurdeo Narain Singh ...	L. R. III. Ind. App. 230	1357
Girdhari v. Sheoraj	I. L. R. I. All. 431	770
Gladstone, *In the Goods of*	I. L. R. I. Cal. 168	1179
Gobind Chunder Koondoo v. Taruck Chunder Bose	I. L. R. III. Cal. 145	1264
Gobind Prasad, *In the matter of the Petition of*..	I. L. R. II. All. 465	386
Gobind Ram Marwary v. Mathoora Sabooya ...	I. L. R. III. Cal. 339	690
Goculdas Jagmohandas and The National Financial Company (Limited) v. Lakhmidas Khimji and others	I. L. R. III. Bom. 402	230
Gogon Manjy v. Kashishwary Deby	I. L. R. III. Cal. 498	1436
Golabdas v. Lakshman Narhar	I. L. R. III. Bom. 221	917
Golabolee v. Kootosboollah Sircar	I. L. R. IV. Cal. 527	176
Golap Chand Marwaree v. Thakurani Mohokoom Kooareé	I. L. R. III. Cal. 341	497
Golokemoney Dabia v. Mohesh Chunder Mosa..	I. L. R. III. Cal. 547	178
Goluck Chunder Masanta v. Nundo Coomar Roy.	I. L. R. IV. Cal. 699	409
Golucknath Misser v. Lalla Prem Lal	I. L. R. III. Cal. 307	973
Goma Mahad Patil v. Gokaldas Khimji and Tapidas Khimji	I. L. R. III. Bom. 74	834
Goodrich v. Venkanna	I. L. R. II. Mad. 104	936
Gopal v. Nanku	I. L. R. I. All. 246	537
Gopal Narayan v. Trimbak Sadashiv	I. L. R. I. Bom. 267	1227

Digitized by Google

Name of Case.	Volume and Page.	Column of Digest.
Gopal Narhar Safray v. Hanmant Ganesh Safray and Ganesh Ramchandra Safray ...	I. L. R. III. Bom. 273	585, 607, 622, 777
Gopal Singh v. Dular Kuar	I. L. R. II. All. 352	121
Gopee Mohun Mozoomdar v. Hills	I. L. R. III. Cal. 789	1273
Gopee Nath Dobey v. Roy Luchmeeput Singh Bahadur	I. L. R. III. Cal. 542	1346
Gopi Wasudev Bhat v. Markande Narayan Bhat.	I. L. R. III. Bom. 30	1005
Gordhan Pema v. Kasandas Balmukundas ...	I. L. R. III. Bom. 179	263
Goshain Girdhariji v. Durga Devi	I. L. R. II. All. 119	145
Gossain Dass Chunder v. Issur Chunder Nath	I. L. R. III. Cal. 224	409
Gosto Behary Pal v. Johur Lall Pal	I. L. R. IV. Cal. 836	1140
Gouree Lall Singh v. Joodhisteer Hajrah ...	I. L. R. I. Cal. 359	184
Gouri Shunker v. Maharajah of Bulrampore	I. L. R. IV. Cal. 839 L. R. VI. Ind. App. 1	45 43
Gourmonee Debia v. Krishna Chunder Sannyal.	I. L. R. IV. Cal. 397	483
Govind Raghunath v. Govinda Jagoji	I. L. R. I. Bom. 500	662, 1342
Govind Vaman v. Sakharam Ramchandra ...	I. L. R. III. Bom. 42	483, 529
Govindan v. Kannaran	I. L. R. I. Mad. 351	961
Greender Chunder Ghose v. Mackintosh ...	I. L. R. IV. Cal. 897	884
Groom v. Wilson	I. L. R. III. Cal. 539	271
Gujar v. Barve	I. L. R. II. Bom. 673	900
Gulab Dai v. Jiwan Ram	I. L. R. II. All. 318	238
Gulabdas Jugjivandas v. The Collector of Surat	L. R. VI. Ind. App. 54 I. L. R. III. Bom. 186	568
Gulabdas v. Lakshman Narhar	I. L. R. III. Bom. 221	917
Gulab Singh v. Amar Singh	I. L. R. II. All. 237	917
Gulab Singh v. Lachman Das	I. L. R. I. All. 748	120
Gulzari Mal v. Jadaun Rai	I. L. R. II. All. 63	345
Gulzari Lal v. The Collector of Bareilly ...	I. L. R. I. All. 596	251
Gumani v. Ram Charan	I. L. R. I. All. 555	985
Gumna Dambershet v. Bhiku	I. L. R. I. Bom. 125	876
Gungapersad v. Gogun Singh	I. L. R. III. Cal. 322	454
Guni Mahomed v. Moran...	I. L. R. IV. Cal. 96	336
Gunnoo Singh v. Latafut Hossein	I. L. R. III. Cal. 336	1020
Gunpat Narain Singh, *In the matter of*	I. L. R. I. Cal. 74	728
Guracharya v. Svamirayacharya...	I. L. R. III. Bom. 431	213
Gur Dayal, *In the matter of the Petition of* ...	I. L. R. II. All. 205	305, 1373
Guru Shidgavda bin Rudragavda v. Rudragavdate kom Dyamangavda	I. L. R. I. Bom. 531	1105

H.

Hadjee Abdoolah, *In the matter of the Petition of.*	I. L. R. II. Cal. 131	
Hadjee Abdoollah v. Meer Reasut Hossein ...	L. R. I. Ind. App. 72	1145, 1288
Hadjee Abdoollah v. Reasut Hossein	L. R. III. Ind. App. 221	
Haidri Bai v. The East India Railway Company.	I. L. R. I. All. 687	1376
Haji Esmail Hajee Sidick v. Shamjee Poonjani.	I. L. R. II. Bom. 550	737
Haji Hasan Ibrahim v. Mancharam Kaliandas...	I. L. R. III. Bom. 137	1256
Haji Jakaria v. Haji Casim	I. L. R. I. Bom. 496	735
Hamid Ali v. Imtiazan	I. L. R. II. All. 71	944
Hamir Singh v. Zakia	I. L. R. I. All. 57	950
Hanmantmal Motichand v. Ramabhai	I. L. R. III. Bom. 198	888

Digitized by Google

Name of Case.	Volume and Page.	Column of Digest.
Hanuman Prasad v. Kaulèshar Pandey... ...	I. L. R. I. All. 301	472
Hanuman Tiwari v. Chirai	I. L. R. II. All. 164	586
Har Sahai Mal v. Maharaj Singh	I. L. R. II. All. 294	1273
Harasatoollah, *In the matter of*, v. Brojonath Ghose	I. L. R. III. Cal. 729	1350
Harbhaj v. Gumani	I. L. R. II. All. 493	1470
Hardeo, *In the matter of*	I. L. R. I. All. 139	365
Hardeo Das v. Hukum Singh	I. L. R. II. All. 320	260
Haribhat v. Damodarbhat	I. L. R. III. Bom. 171	619
Harris v. Harris	I. L. R. I. Cal. 285	695
Harshankar Parshad, *In the matter of the Petition of*	I. L. R. I. Cal. 178	1424
Harsukh v. Meghraj	I. L. R. II. All. 345	424
Hasam Shah v. Gopal Rai	I. L. R. II. All. 428	1273
Hasan Ali v. Mehdi Husain	I. L. R. I. All. 533	953
Hasan Ali v. Naga Mal	I. L. R. I. All. 288	583
Hasoon Arra Begum v. Jawadoonnissa Satooda Khandan	I. L. R. IV. Cal. 29	250
Hearn v. Bapu Saju Naikin	I. L. R. I. Bom. 505	894
Heera Lall Pramanick v. Barikunnissa Bibee ...	I. L. R. III. Cal. 501	1067
Heeralall Rukhit v. Ram Surun Lall	I. L. R. IV. Cal. 835	735
Heera Lall Mookhopadya v. Dhunput Singh ...	I. L. R. IV. Cal. 500	791
Hem Chunder Chunder v. Prankristo Chunder...	I. L. R. I. Cal. 403	1210
Hem Latta v. Shreedone Borooa	I. L. R. III. Cal. 771	217
Hemnath Dutt v. Ashgur Sindhur	I. L. R. IV. Cal. 894	543
Hemendro Coomar Mullick v. Rajendrolall Moonshee	I. L. R. III. Cal. 353	755
Hendry v. Mutty Lall Dhur	I. L. R. II. Cal. 395	1359
Hewson, *In the Goods of*	I. L. R. IV. Cal. 770	70
Hinde v. Baudry	I. L. R. II. Mad. 18	42
Hingan Khan v. Ganga Prasad	I. L. R. I. All. 293	1148
Hira Chand v. Adbal	I. L. R. I. All. 455	332
Hira Lall v. Ganesh Prasad	I. L. R. II. All. 455	1488
Hirdy Narain v. Syed Allaoollah	I. L. R. IV. Cal. 72	143
Hirji Jina v. Naran Mulji...	I. L. R. I. Bom. 1	9
Honamma v. Timanbhat	I. L. R. I. Bom. 559	611, 644
Horro Narain v. Shoodha Kristo Berah ...	I. L. R. IV. Cal. 890	1328
Howard v. Wilson...	I. L. R. IV. Cal. 231	127, 1171
Hukumchand v. Hiralal	I. L. R. III. Bom. 159	505
Hurpurshad v. Sheo Dyal...	L. R. III. Ind. App. 259	391, 757, 1076
Hurrish Chunder Roy v. The Collector of Jessore	I. L. R. III. Cal. 712	179
Hurrodurga Chowdhrani v. Sharrat Soondery Dabea	I. L. R. IV. Cal. 674	536
Hurrogobind Raha v. Ramrutno Dey	I. L. R. IV. Cal. 67	224
Hurronath Bhunjo v. Chunni Lall Ghose ...	I. L. R. IV. Cal. 877	911
Hurronath Roy v. Gobind Chunder Dutt ...	L. R. II. Ind. App. 193	471
Hurropersaud Roy Chowdhry v. Shamapersaud Roy Chowdhry	L. R. V. Ind. App. 31 I. L. R. III. Cal. 654	745
Hurro Proshad Roy v. Gopaul Dass Dutt ...	I. L. R. III. Cal. 817	863
Hurro Soondery Chowderain, *In the matter of the Petition of*	I. L. R. IV. Cal. 19	987, 1077

Digitized by Google

Name of Case.	Volume and Page.	Column of Digest.
Hurry Doss Bonnerjee, *In the Goods of*... ...	I. L. R. IV. Cal. 87	69
Hurrymohun Shaha v. Shonatun Shaha ...	I. L. R. I. Cal. 275	629
Hursuhai Singh v. Syud Lootf Ali Khan ...	L. R. II. Ind. App. 28	1214
Hurst v. The Mussoorie Bank	I. L. R. I. All. 762	967
Husain Bakhsh v. Madge...	I. L. R. I. All. 525	906
Husain Shah v Gopal Rai	I. L. R. I. All. 428	906
Husaini Bibi v. Mohsin Khan	I. L. R. I. All. 126	117, 148
Hyder Ali v. Jafar Ali	I. L. R. I. Cal. 183	179
I.		
Ilahi Bakhsh v. Imam Bakhsh	I. L. R. I. All. 324	235
Imam Ali v. Dasaundhi Ram	I. L. R. I. All. 508	906
Imbichi Koya v. Kakunnat Upakki	I. L. R. I. Mad. 391	246
Imperatrix v. Baban Khan walad Mhaskoji ...	I. L. R. II. Bom. 142	231
Imperatrix v. Bhawani bin Panduji and Sakharam bin Khundoji	I. L. R. II. Bom. 525	360
Imperatrix v. Dongaji Andaji	I. L. R. II. Bom. 564	3
Imperatrix v. Gowdapa bin Venkugowda ...	I. L. R. II. Bom. 534	1296
Imperatrix v Hari Ganu	I. L. R. II. Bom. 526	130
Imperatrix v. Khimchand Narayan	I. L. R. III. Bom. 384	197
Imperatrix v. Lakshman Sakharam, Vaman Hari, and Balaji Krishna	I. L. R. II. Bom. 481	276, 1372
Imperatrix v. Malka	I. L. R. II. Bom. 643	356
Imperatrix v. Padamanabha Pai	I. L. R. II. Bom. 384	1372
Imperatrix v. Pitamber Jina	I. L. R. II. Bom. 61	467
In re Abdool Hamid	I. L. R. IV Cal. 94	772
In re Annapurnabai	I. L. R. I. Bom. 630	373
In re Empress v. Mannoo Tamoolee	I. L. R. IV. Cal. 696	501
In re Jagjivan Nanabhai	I. L. R. I. Bom. 82	537
In re Keshav Lakshman	I. L. R. I. Bom. 175	284
In re Murray	I. L. R. III. Cal. 58	733
In re Muse Ali Adam	I. L. R. II. Bom. 653	357
In re The Fleming Spinning and Weaving Company (Limited)	I. L. R III. Bom. 299	282
In re Tukaram Vithal	I. L. R. II. Bom. 527	196
In the Goods of Elliott	I. L. R. IV. Cal. 106	453
In the Goods of Gasper	I. L. R. III. Cal. 736	347
In the Goods of Gladstone & Son	I. L. R. I Cal. 168	1179
In the Goods of Hewson	I. L. R. IV. Cal. 770	70
In the Goods of Hurry Doss Bonerjee and Sreemutty Gungamony	I. L. R. IV. Cal. 87	69
In the Goods of J. White	I. L. R. IV. Cal. 582	1177
In the Goods of Murch	I. L. R. IV. Cal. 725	69
In the Goods of Roymoney Dossee	I. L. R. I. Cal. 150	166
In the Goods of Rushton	I. L. R. III. Cal. 736	347
In the Goods of Shamchurn Mullick	I. L. R. I. Cal. 52	1176
In the Goods of Sir John Wemyss	I. L. R. IV. Cal. 721	1177
In the Goods of Wilson	I. L. R. I Cal. 149	715
In the matter of	I. L. R. I. Mad. 305	379
In the matter of Act XVIII. of 1869 *and of* The Uncovenanted Service Bank	I L. R. IV. Cal. 829	1415

Digitized by Google

Name of Case.	Volume and Page.	Column of Digest.
In the matter of Abdool Hamed	I. L. R. IV. Cal. 94	772
In the matter of Bish Nath	I. L. R. I. All. 318	1239
In the matter of Bittan	I. L. R. II. Cal. 357	572
In the matter of Chinamarigada	I. L. R. I. Mad. 289	352
In the matter of Chumman Shah	I. L. R. III. Cal. 756	371, 508
In the matter of Doyal Mistree v. Kupoor Chund	I. L. R. IV. Cal. 318	759
In the matter of Hardeo	I. L. R. I. All. 139	365
In the matter of Harshankar Prasad	I. L. R. I. All. 178	1424
In the matter of Mathra Prasad	I. L. R. I. All. 296	1420
In the matter of Pursooram Boroah	I. L. R. II. Cal. 117	353
In the matter of Rukmin	I. L. R. I. All. 287	119
In the matter of The Empress v. Abdool Kurreem	I. L. R. IV. Cal. 10	5, 1446
In the matter of The Empress v. Futteh Jyab Khan	I. L. R. IV. Cal. 570	778
In the matter of The New Fleming Spinning and Weaving Company (Limited)	I. L. R. III. Bom. 489	282, 1125
In the matter of Umbica Nundun Biswas ...	I. L. R. III. Cal. 434	733
In the matter of the Petition of Chunder Narain v. Farquharson	I. L. R. IV. Cal. 837	384
In the matter of the Petition of Desputty Sing ..	I. L. R. II. Cal. 280	1177
In the matter of the Petition of Dijahur Dutt ...	I. L. R. IV. Cal. 647	362
In the matter of the Petition of Gur Dayal ...	I. L. R. II. All. 205	305, 1373
In the matter of the Petition of Hurro Soondery Chowdhrain	I. L. R. IV. Cal. 20	987, 1077
In the matter of the Petition of Jotharam Davay.	I. L. R. II. Mad. 30	577, 689, 1158
In the matter of the Petition of Kunund Narain..	I. L. R. IV. Cal. 650	383
In the matter of the Petition of Mackenzie v. Shere Bahadoor Sahi	I. L. R. IV. Cal. 378	381
In the matter of the Petition of Modun Mohun...	I. L. R. IV. Cal. 376	1095
In the matter of the Petition of Mohesh Chunder Khan	I. L. R. IV. Cal. 417	382
In the matter of the Petition of Mulo	I. L. R. II. All. 299	263
In the matter of the Petition of Narain Das ...	I. L. R. I. All. 610	157
In the matter of the Petition of Nursey Kessowjee...	I. L. R. III. Bom. 270	1330
In the matter of the Petition of Oodoychurn Mitter	I. L. R. IV. Cal. 411	214
In the matter of the Petition of Ratansi Kalianji and six others	I. L. R. II. Bom. 148	270
In the matter of the Petition of Rukmin	I. L. R. I. All. 287	119
In the matter of the Petition of Shibo Prosad Pandah	I. L. R. IV. Cal. 124	431
In the matter of the Petition of Soorja Kant Achraj Chowdhry	I. L. R. I. Cal. 383	183, 1420
In the matter of the Petition of Subba Aitala ...	I. L. R. I. Mad. 304	130
In the matter of the Petition and Schedule of Vardala Charri	I. L. R. II. Mad. 15	734
In the matter of The Sarawak and Hindustan Banking and Trading Company (Limited) ...	I. L. R. IV. Cal. 704	283

Digitized by Google

Name of Case.	Volume and Page.	Column of Digest.
In the matter of the Will of C. M. Hunter ...	I. L. R. IV. Cal. 420	1506
Inayat Khan v. Rahmat Bibi	I. L. R. II. All. 97	1257
Irvine v. The Union Bank of Australia ...	I. L. R. III. Cal. 280 L. R. IV. Ind. App. 86	1128
Ishwardas Gulabchand v. The G. I. P. Ry. Company	I. L. R. III. Bom. 120	1204
Issurree Dassee v. Abdool Khalak	I. L. R. IV. Cal. 415	904
Ittapu Revivarman v. Eravanni Revivarman ...	I. L. R. I. Mad. 153	960
J.		
Jadu Dass v. Sutherland	I. L. R. IV. Cal. 559	337
Jadu Lal v. Ram Gholam...	I. L. R. I. All. 316	1267
Jagan Nath v. Lalman	I. L. R. I. All. 260	118
Jagan Nath Panday v. Prag Singh	I. L. R. II. All. 545	1278
Jageshar Singh v. Jawahir Singh	I. L. R. I. All. 311	1157
Jagesri Kuar v. Ram Nath Bhagat	I. L. R. I. All. 371	410
Jagjivan Nanabhai, *In re*	I. L. R. I. Bom. 80	537
Jagjivan Nanabhai v. Shridhar Balkrishna Nagarkar...	I. L. R. II. Bom. 252	1027
Jai Shankar v. Tetley	I. L. R. I. All. 586	907
Jaikisondas Gopaldas v. Harkissondas Hullochandas and Muthuradas Purshotamdas ...	I. L. R. II. Bom. 9	343, 653
Jallidar Singh v. Ram Lal	I. L. R. IV. Cal. 723	600
Jamal walad Ahmed v. Jamal walad Jallal ...	I. L. R. I. Bom. 633	788
Jamna v. Machul Sahu	I, L. R. II. All. 315	650
Jamnadas v. Lalitaram	I. L. R. II. Bom. 294	913, 1104
Jamnadas Shankarlal and Vrijbhuknan Shankarlal v. Atmaram Harjiwan	I. L. R. II. Bom. 133	964
Jan Muhammad v. Ilahi Bakhsh...	I. L. R. I. All. 290	249
Janokee Debea v Gopaul Acharjea	I. L. R. II. Cal. 365	584, 1141
Janokey Nath Roy, *In the matter of the Petition of*	I. L. R. II. Cal. 466	1158
Janokinath Mookerjee v. Ramrunjun Chuckerbutty	I. L. R. IV. Cal. 949	985
Jardine, Skinner, & Co. v. Rani Surat Soondari Debi	L. R. V. Ind. App. 164	1309
Javali Ramasami v. Sathambakam Theruvengadasami...	I. L. R. I. Mad. 340	771
Jawahir Lal v. Narain Das	I. L. R. I. All. 644	914
Jeoni v. Bhagwan Sahai	I. L. R. I. All. 541	246
Jibhai Mahipati v. Parbhu Bapu...	I. L. R. I. Bom. 59	902
Jivi v. Ramji	I. L. R. III. Bom. 207	638
Jiwan Baksh v. Imtiaz Begam	I. L. R. II. All. 93	947
Jiwan Singh v. Sarnam Singh	I. L. R. I. All. 97	884
Jodoo Lal Mullick v. Kali Kishen Tagore ...	L. R. VI. Ind. App. 190	1331
Jogendro Mullick Nauth v. Sreemutty Nittokissoree Dossee	L. R. V. Ind. App. 55	639
Jogesh Chunder Dutt v. Kali Churn Dutt ...	I. L. R. III. Cal. 30	991
Jogeshar Singh v. Jawahir Singh	I. L. R. I. All. 311	1157
Johurra Bibee v. Sreegopal Misser	I. L. R. I. Cal. 470	643
Joshi v. Joshi	I. L. R. II Bom. 650	1002

Digitized by Google

Name of Case.	Volume and Page.	Column of Digest.
Jotharam Davay, *In the matter of the Petition of.*	I. L. R. II. Mad. 30	577, 689, 1158
Joti Bhimrao v. Balu	I. L. R. I. Bom. 208	2, 982
Joy Narain Giri v. Girish Chunder Myti ...	I. L. R. IV. Cal 434 I. L. R. V. Ind. A. 228	660
Joykisto Cowar v. Nittyannund Nundy ...	I. L. R. III. Cal. 738	252, 607
Jugdeep Narain Singh v. Deendyal Lal ...	L. R. IV. Ind. App. 247 I. L. R. III. Cal. 198	672
Juggernauth Doss v. Brijnath Doss	I. L. R. IV. Cal. 322	743, 844, 1460
Juggernath Sahoo Sheosahoy Sahoo v. Syud Shah Mahomed Hossein	L. R. II. Ind. App. 48	868
Juggobundhoo Shaha v. Promothonath Roy.....	I, L. R. IV. Cal. 767	752
Juggut Chunder Chuckerbutty, *In the matter of.*	I. L. R. II. Cal. 110	862
Juggut Narain Singh v. The Collector of Manbhoom	I. L. R. IV. Cal. 413	618
Jugmohun Haldar v. Sarodamoyee Dossee ...	I. L. R. III. Cal. 149	656, 666
Jumoona Dassya v. Bamasoondari Dassya ...	I. L. R. I. Cal. 289	586, 1327
Jumoona Dassya Chowdrani v. Bamasoonderai Dassya Chowdrani	L. R. III. Ind. Ap. 72	
Juneswar Dass v. Mahabeer Singh	I. L. R. I. Cal. 163 L. R. III. Ind. App. 1	877

K.

Kabir walad Ramjan v. Mahadu walad Shiwaji..	I. L. R. II. Bom. 360	1328
Kachubhai v. Krishnabhai	I. L. R. II. Bom. 635	504, 1140
Kadir Baksh v. Ilahi Baksh	I. L. R. II. All. 283	535
Kadumbinee Dossee v. Koylash Kaminee Dossee	I. L. R. II. Cal. 431	1436
Kaleshar Prasad v. Jagan Nath	I. L. R. I. All. 650	236
Kali Charan Rai v. Ajudhia Rai...	I. L. R. II. All. 148	180
Kali Kishen Tagore v. Jodoo Lall Mullick ...	L. R. VI. Ind. App. 190	1331
Kali Kishore Roy v. Dhununjoy Roy	I. L. R. III. Cal. 228	113, 899
Kali Prasad v. Ram Charan	I. L. R. I. All. 159	655
Kalian Das v. Nawal Singh	I. L. R. I. All. 620	122, 777
Kalian Das v. Tika Ram...	I. L. R. II. All. 137	57
Kaliprosad Rai v. Meher Chandro Roy... ...	I. L. R. IV. Cal. 222	1405
Kaliprosonno Ghose v. Kamini Soonduri Chowdrain	I. L. R. IV. Cal. 475	1008
Kallapa v. Venkatesh Vinayak	I. L. R. II. Bom. 676	249
Kally Prosonno Ghose v. Gocool Chunder Mitter.	I. L. R. II. Cal. 295	589
Kally Prosonno Hazra v. Heera Lall Mundle ...	I. L. R. II. Cal. 468	886
Kalo Nilkanth v. Lakshmibai	I. L. R. II. Bom. 637	877
Kalova kom Bhujangrav v. Padapa walad Bhujangrav	I. L. R. I. Bom. 248	918
Kalu bin Bhiwaji v. Vishram Mawaji	I. L. R. I. Bom. 543	781, 1285
Kamal Singh v. Batul Fatima	I. L. R. II. All. 460	1469
Kamalam v. Sadagopasami	I. L. R. I. Mad. 356	897
Kamayya v. Leman	I. L. R. II. Mad. 37	768
Kanahi Ram v. Biddya Ram	I. L. R. I. All. 549	932
Kanahia v. Ram. Kishen	I. L. R. II. All. 429	772
Kanahia Lall v. Kali Din...	I. L. R. II. All. 392	1222
Kanchan Singh v. Sheo Parsad	I. L. R. II. All. 291	903
Kangal Chandra Ruj v. Kanya Lall Ruj ...	I. L. R. IV. Cal. 69	428

Digitized by Google

Name of Case.	Volume and Page.		Column of Digest.
Kanhaiya Lal v. Domingo	I. L. R. I. All.	732	158
Kanthi Ram v. Bankey Lal	I. L. R. II. All.	396	128
Kantoo Lall v. Girdharee Lall	L. R. I. Ind. App.	321	395
Kantoo Lall v. Muddun Thakoor	L. R. I. Ind. App.	321	395
Karam Ali v. Halima	I. L. R. I. All.	686	243
Karan Singh v. Ram Lal	I. L. R. II. All.	96	1220
Karim v. Muhammad Kadar	I. L. R. II. Mad.	89	1435
Karim Bakhsh v. Budha	I. L. R. I. All.	249	1324
Kartick Chunder Setty v. Gopaulkisto Paulit ...	I. L. R. III. Cal.	264	773
Kasturbai v. Shivajiram Devkurna	I. L. R. III. Bom.	372	638, 644, 651
Kavasji Nanabhai v. Lallubhoy Vullabhoy ...	I. L. R. I. Bom.	468	286
Kellie v. Fraser	I. L. R. II. Cal.	445	1440
Kennelly v. Wyman	I. L R. I. Cal.	178	1139
Keshava v. Keshava	I. L. R. II. Mad.	45	788
Keshao Lukshimon, *In re*...	I. L. R. I. Bom.	175	284
Keval Kuber v. The Talukdari Settlement Officer	I. L. R. I. Bom.	586	1279
Khajah Ahsanoollah v. Kajee Aftabooddeen ...	I. L. R. IV. Cal.	594	745
Khajah Ashanoollah v. Ramdhone Bhuttacharjee	I. L. R. I. Cal.	325	176
Khajooroonissa v. Rowshan Jehan	I. L. R. II. Cal.	184	943
Khando Narayan Kulkarni v. Apaji Sadashiv Kulkarni	I. L. R. II. Bom.	370	416
Khandas Dulabdas v. Tarachand Omarchand ...	I. L. R. I. Bom.	674	1238
Kherodemoney Dossee v. Doorgamoney Dossee.	I. L. R. IV. Cal.	455	678, 881
Kheta Mal v. Chuni Lal	I. L. R. II All.	173	146
Khoblall Baboo v. Ram Chunder Bose	I. L. R. II. Cal.	434	1434
Khoob Lall v. Jungle Singh	I. L. R. III. Cal.	787	120
Khub Chand v. Kalian Das	I. L. R. I. All.	240	1082, 1345
Khuggender Narain Chowdhry v. Sharupgir Oghorenath	I. L. R. IV. Cal.	543	617
Kinmond v. Jackson	I. L. R. III. Cal.	17	889
Kirath Chand v. Ganesh Prasad	I. L. R. II. All.	358	916
Kirtee Chunder Mitter v. Struthers	I. L. R. II. Cal.	335	322
Kishen Gopaul Mawar v. Barnes...	I. L. R. II. Cal.	374	175
Ko Byaw v. Moung Shoay Att.	L. R. III. Ind. App.	61	456
Koegler v. Prosonno Coomar Chatterjee... ...	I. L. R. II. Cal.	472	1084
Koegler v. The Coringa Oil Company	I. L. R. I. Cal.	42	320
Komollochun Dutt v. Nilruttun Mundle ...	I. L. R. IV. Cal.	360	1176
Konwar Doorganath Roy v. Ram Chunder Sen	I. L. R. II. Cal. L. R. IV. Ind. App.	341 52	437
Kooer Gujraj Singh v. Runjeet Singh	L.R. I. Ind. App.	9	658
Koonj Behary Chowdhry v. Gocool Chunder Chowdhry	I. L. R. III. Cal.	616	216
Koonjo Mohun Dass v. Nobo Coomar Shaha ...	I. L. R. IV. Cal.	216	864
Koylash Chunder Dass v. Boykoonto Nath Chundra	I. L. R. III. Cal.	619	916
Koylash Chunder Paul Chowdhry v. Preonath Roy Chowdhry	I. L. R. IV. Cal.	610	891
Krisha Behari Roy v. Brojeswari Chowdranee.	L. R. II. Ind. App. I. L. R. I. Cal.	283 144	1257
Krishna Kishore Shaha v. Bireshur Mozoomdar.	I. L. R. IV. Cal.	595	1401
Krishna Mohun Bose v. Okhilmoni Dossee	I. L. R. III. Cal.	331	639

Digitized by Google

Name of Case.	Volume and Page.		Column of Digest.
Krishnaji Ravji Godbole v. Ramachandra Sadashiv	I. L. R. I. Bom.	70	787
Krishnama v. Krishnasami	I. L. R. II. Mad.	62	455
Krishnareddi Govindareddi v. Stuart	I. L. R. I. Mad.	192	32
Krishnarav v. Govind	I. L. R. II. Bom.	25	275
Kristo Indro Saha v. Huromonee Dassee ...	L. R. I. Ind. App.	84	1145
Kudomee Dossee v. Jotteeram Kolita	I. L. R. III. Cal.	305	612
Kulo Nilkanth v. Lakshmibai	I. L. R. II. Bom.	637	877
Kumarasami Nadan v. Palanagappa Chetti ...	I. L. R. I. Mad.	385	651
Kumood Narain Bhoop v. Purna Chunder Roy.	I. L. R. IV. Cal.	547	768
Kunund Narain Bhoop, *In the matter of the Petition of*	I. L. R. IV. Cal.	650	383
Kunhi Moidin Kutti v. Ramen Unni	I. L. R. I. Mad.	203	67
Kuray Mal v. Puran Mal	I. L. R. II. All.	565	1024
Kuvarji v. Moti Haridas	I. L. R. III. Bom.	23	843
Kuverji Tulsidas v. The G. I. P. Railway Company	I. L. R. III. Bom.	104	1204
L.			
Lachman Bibi v. Patni Ram	I. L. R. I. All.	510	533
Lachman Rai v. Akbar Khan	I. L. R. I. All.	440	392
Lachman Singh v. Mohan	I. L. R. II. All.	497	128
Lachman Singh v. Sanwal Singh	I. L. R. I. All.	543	235
Lachmi Narain v. Rajah Partap Singh	I. L. R. II. All.	1	221
Lachmi Narain Lal. v. Shevambar Lal	I. L. R. II. All.	409	876
Lachmi Narain v. Wilayti Begam	I. L. R. II. All.	433	562
Laidley v. Gunness Chunder Sahoo	I. L. R. IV. Cal.	438	1306
Lackmidas Vithaldas v. Ibrahim Oosman ...	I. L. R. II. Bom.	644	112
Lakshman Ramchandra Joshi v. Satyabhamabai.	I. L. R. II. Bom.	494	641, 648, 1033
Lakshman Dada Naik v. Ramachandra Dada Naik	I. L. R. I. Bom.	561	497, 655, 685
Lakshmibai v. Shridhar Vasudev Takle ...	I. L. R. III. Bom.	1	615
Lakhmi Chand v. Tori Lal	I. L. R. I. All.	618	317
Lal Das v. Nekunjo Bhaishiani	I. L. R. IV. Cal.	374	955
Lala v. Hira Singh	I. L. R. II. All.	49	219, 319
Lall Sahoo v. Deo Narain Singh	I. L. R. III. Cal.	781	174
Lalla Choonee Lall v. Munnoo Lall	L. R. I. Ind. App.	144	482—1143
Lalla Gopee Chand, *In the matter of the Petition of*	I. L. R. II. Cal.	128	62
Lalla Jogeshur Sahoy v. Mussumat Phoolbas Koonwur	L. R. III. Ind. App.	7	598, 1144
Lalla Kali Prosad v. Buli Singh	I. L. R. IV. Cal.	789	930
Lalla Nowbut Lall v. Lalla Jewan Lall	I. L. R. IV. Cal.	831	951
Lallah Barroomul v. The Official Liquidator ...	I. L. R. IV. Cal.	704	288
Lallah Rameshur Doyal Singh v. Lallah Bissen Doyal	I. L. R. I. Cal.	406	394
Lallbhoy Vullubhoy v. Cowasjee Nanabhay ...	L. R. III. Ind. App.	200	286
Lallubhai Bapubhai v. Mankuvarbai	I. L. R. II. Bom.	388	539, 609, 631
Lallu Ganesh v. Ranchhod Kahandas	I. L. R. II. Bom.	641	256
Lalubhai Surchand v. Bai Amrit	I. L. R. II. Bom.	299	1061
Land Mortgage Bank of India v. Vishnu Govind Patankar	I. L. R. II. Bom.	670	467

Digitized by Google

Name of Case.	Volume and Page.	Column of Digest.
Lati Kooer v. Subadar Kooer	I. L. R. III. Cal. 720	975
Leelanund Singh Bahadoor v. Thakoor Munrunjun Singh	I. L. R. III. Cal. 251	560
Lekhraj Roy v. Kunhya Singh	I. L. R. III. Cal. 210	135, 567
Lekkamini v. Collector of Trichinopoly ...	L. R. I. Ind. App. 283, 293	1
Leman v. Damodaraya	I. L. R. I. Mad. 158	936
Lokenath Ghose v. Jugobundhoo Roy ...	I. L. R. I. Cal. 297	817
Lokhee Narain Roy v. Kalypuddo Bandopadhya and Shamapuddo Bandopadhya	L. R. II. Ind. App. 154	248
London, Bombay and Mediterranean Bank (Limited) v. Bhanji Zutani and another	I. L. R. II. Bom. 116	283
Luchmessur Singh v. Leelanund Singh... ...	I. L. R. IV. Cal. 599	550
Luchmi Dai Koori v. Asman Singh	I. L. R. II. Cal. 213	674
Luchmun Singh, Ajeet Singh, and Ramdeen Singh v. Shumshere Singh	L. R. II. Ind. App. 58	671, 1288
Luckhy Narain v. Kally Puddo Banerjee	I. L. R. IV. Cal. 882	976
Lukhykant Bose, *In the matter of the Petition of.*	I. L. R. I. Cal. 180	1419
Luckmidas Vithaldas v. Ebrahim Oosman ...	I. L. R. II. Bom. 644	112
Lungessur Kooer v. Sookha Ojha	I. L. R. III. Cal. 151	126
Lyell v. Ganga Dai	I. L. R. I. All. 60	1040

M.

MacGillivary v. The Jokai Assam Tea Co. ...	I. L. R. II. Cal. 33	969
Mackenzie v. Shere Bahadoor Ali	I. L. R. IV. Cal. 878	381
Mackintosh v. Wingrove	I. L. R. IV. Cal. 137	1475
Mackintosh v. Hunt	I. L. R. II. Cal. 202	324
Madalatha, *Ex parte*	I. L. R. II. Mad. 75	124
Madhoji v. Vyankaji	I. L. R. I. Bom 197	125
Madhavan v. Achudu	I. L. R. I. Mad. 301	868
Madhavrao Keshav Tilak v. Gungabai	I. L. R. II. Bom. 639	649
Madhavarayya v. Trithasami	I. L. R. I. Mad. 307	608
Madho Das v. Kamta Das	I. L. R. I. All. 539	628
Madho Das v. Rukman Sevak Singh	I. L. R. II. All. 287	1290
Madhoo Proshaud Singh v. Purshan Ram ...	I. L. R. IV. Cal. 520	1247
Madhub Chunder Giree, *In the matter of the Petition of*	I. L. R. III. Cal. 243	878
Madhub Chunder Giree v. Sham Chand Giree...	I. L. R. III. Cal. 243	1421
Madras Railway Company v. Zemindar of Carvatenagaram	L. R. I. Ind. App. 364	1452
Mahabeer Singh v. Juneswar Dass	I. L. R. III. Ind. App. 1	
Mahabir Parshad v. Debi Dial	I. L. R. I. All. 291	1149
Mahadaji v. Vyankaji	I. L. R. I. Bom. 197	126, 1226
Mahadeva Rayar v. Sappani	I. L. R. I. Mad. 396	1287
Mahantappa v. Nilgangaura	I. L. R. III. Bom. 368	628
Maharajah of Bulrampur v. Gouri Shunker ...	L. R. VI. Ind. App. 1	45
Maharajah Luchmessur Singh v. Bissessur Lall Sahoo	L. R. VI. Ind. App. 233	534, 675
Maharajah of Bulrampur v. Uman Pal Singh and Ganesh Singh	L. R. V. Ind. App. 225	40

Digitized by Google

Name of Case.	Volume and Page.	Column of Digest.
Maharajah Pertab Narain Singh v. Maharanee Subhao Koer and others	L. R. IV. Ind. App. 228 L. R. V. Ind. App. 171 I. L. R. III. Cal. 626	47, 1145
Maharana Fattehsangji Jaswatsangji v. Dessai Kallianraiji Hekoomutraiji	L. R. I. Ind. App. 34	1462
Mahomed Arshad Chowdhry v. Sajida Banoo ...	I. L. R. III. Cal. 702	950
Mahomed Badsha v. Nicol, Fleming, & Co. ...	I. L. R. IV. Cal. 355	258
Mahomed Elahee Buksh v. Brojokishore Sen ...	I. L. R. IV. Cal. 497	177
Mahomed Ewaz v. Brij Lall	L. R. IV. Ind. App. 166	1231
Mahomed Hossain Rowthen v. Thumbasawmy Mudelly	L. R. II. Ind. App. 244	1
Mahomed Shuffli v. Laldin Abdula	I. L. R. III. Bom. 227	271
Mahtab Chunder Bahadoor v. Ram Lall Mookerjee	I. L. R. III. Cal. 351	745
Makundi Lal v. Kaunsila	I. L. R. I. All. 568	971, 1352
Malcolm v. Gasper, *In the matter of* The Empress of India on the Prosecution of	I. L. R. II. Cal. 278	567
Man Kuar v. Jasodha Kuar	I. L. R. I. All. 478	318
Man Singh v. Narayan Das	I. L. R. I. All. 480	1268
Manally Chenna Kesavaraya v. Mangadu Vaidelinga	I. L. R. Mad. 343	899
Mancherji Kawasji Davur v. Mithibai	I. L. R. I. Bom. 506	39
Maneckji Limji Mancherji v. Goolbai	I. L. R. III. Bom. 241	1376
Manessur Dass v. The Collector and Municipal Commissioners of Chapra	I. L. R. I. Cal. 409	173
Mangal Khan v. Mumtaz Ali	I. L. R. II. All. 239	835
Manickbai v. Hormasji Bomanji...	I. L. R. I. Bom. 547	714
Manick Chunder Dutt v. Bhuggobutty Dossee...	I. L. R. III. Cal. 443	584
Manik Singh v. Paras Ram	I. L. R. I. All. 727	1352
Maniklal Atmaram v. Munchersha Dinsha ...	I. L. R. I. Bom. 269	201, 538, 684
Manna Lal v. Bank of Bengal	I. L. R. I. All. 309	318
Manni Kasaundhan v. Crooke	I. L. R. II. All. 296	52
Manohar Ganesh v. Bawa Ramcharandas ...	I. L. R. II. Bom. 219	345, 346, 347
Manohar Lal v. Gauri Shankar	I. L. R. I. All. 476	27
Manohar Doss v. Romanath Law	I. L. R. III. Cal. 473	168
Maratib Ali v. Abdul Hakim	I. L. R. I. All. 569	1153, 1505
Martin v. Lawrence	I. K. R. IV. Cal. 655	706
Maseyk v. Fergusson	I. L. R. IV. Cal. 304, 670	1504
Mathappa Chetti v. Chellappa Chetti	I. L. R. I. Mad. 196	772
Mathra Parshad, *In the matter of the Petition of*	I. L. R. I. All. 296	1420
Mattongeney Dossee v. Ramnarain Sadkhan ...	I. L. R. IV. Cal. 83	1232
Mathura Das v. Babu Lal...	I. L. R. I. All. 688	15
Matungee Churn Mitter v. Moorrary Mohun Ghose	I. L. R. I. Cal. 175	186
Mayor of Lyons v. Advocate-General of Bengal..	L. R. III. Ind. App. 32 I. L. R. I. Cal. 303	1512
Meer Mahomed Hossein v. A. J. Forbes ...	L. R. II. Ind. App. 1	472
Meer Reasut Hossein v. Hadjee Abdoollah ...	L. R. I. Ind. App. 72	1146
Meghraj v. Zakir Husain...	I. L. R. I. All. 280	23
Memon Hajee Haroon Mahomed v. Molvi Abdul Karim and Moola Ahmed Moola Abdulla ...	I. L. R. III. Bom. 91	1171

Digitized by Google

Name of Case.	Volume and Page.	Column of Digest.
Mercer v. Narpat Rai	I. L. R. I. All. 736	534
Miller v. Brindabun	I. L. R. IV. Cal. 946	552
Miller v. The Administrator-General of Bengal	I. L. R. I. Cal. 412	713
Mirza Ally Bebanee v. Syed Hyder Hoosein ...	I. L. R. II. Bom. 449	259
Mirza Himmut Bahadoor v. Mussamat Saheb-zadee Begum	L. R. I. Ind. App. 23	943
Mirza Himmut Bahadoor, Mussumat Bismullah Begum, and Mussumat Sahibzadee Begum v. Ranee Sonet Kowar	L. R. III. Ind. App. 92	481
Mirza Jehan Kadr v. Afsur Bahu ...	I. L. R. IV. Cal. 727 L. R. VI. Ind. App. 76	298
Mirza Mahomed Aga Ali Khan Bahadoor v. The Widow of Balmakund	L. R. III. Ind. App. 241	1434
Mirza Mahomed Ally Sherazee and The Burmah Company (Limited,) v. The Bombay Burmah Trading Corporation (Limited) ...	L. R. V. Ind. App. 130	1160
Mobaruck Shah v. Toofany	I. L. R. IV. Cal. 206	1077
Modalatha, *Ex parte*	I. L. R. II. Mad. 75	124
Modun Mohun, *In the matter of the Petition of*	I. L. R. IV. Cal. 376	1095
Mohabeer Proshad Singh v. Bunwaree Lall Sahoo	L. R. I. Ind. App. 89	29
Mohammed Ewaz v. Birj Lall	L. R. IV. Ind. App. 166	1231
Mohanlal Jechand v. Amratlal Bechardas ...	I. L. R. III. Bom. 174	391, 461
Mohesh Chunder Banerjee v. Ram Pursono Chowdhry	I. L. R. IV. Cal. 539	338
Mohesh Chunder Khan, *In the matter of the Petition of*	I. L. R. IV. Cal. 417	382
Mohesh Mahto v. Sheikh Piru	I. L. R. II. Cal. 470	125
Mohesh Mistree, *In the matter of the Petition of*	I. L. R. I. Cal. 282	1293
Mohima Chunder Dey Sircar v. Hurro Lall Sircar...	I. L. R. III. Cal. 768	861
Mohiny Mohun Roy v. Ichamoyee Dassea ...	I. L. R. IV. Cal. 612	181
Mohummud Buhadoor Khan v. Collector of Bareilly	L. R. I. Ind. App. 167	28
Mokoondo Lall Shaw v. Gonesh Chunder Shaw.	I. L. R. I. Cal. 104	677
Monmohinee Dossee v. Khetter Gopaul Dey ...	I. L. R. I. Cal. 127	112
Monohur Doss v. McNaghten	I. L. R. III. Cal. 231	716
Monohur Doss v. Romonauth Law	I. L. R. III. Cal. 473	168
Moran v. Mittu Bibee	I. L. R. II. Cal. 228 I. L. R. II. Cal. 58	62, 1020
Moreshwar Bapuji Phatak v. Kushaba Shankroji.	I. L. R. II. Bom. 248	3
Morgan v. Kirby	I. L. R. II. Mad. 46	464
Moru bin Patlaji v. Gopal bin Satu	I. L. R. II. Bom. 120	125, 859
Mothoora Mohun Roy v. Peary Mohun Shaw ...	I. L. R. IV. Cal. 259	1414
Mothooranath Chuttopadhya v. Kristo Kumar Ghose	I. L. R. IV. Cal. 369	332
Mothoormohun Roy v. The Bank of Bengal ...	I. L. R. III. Cal. 392	1157
Mothoormohun Roy v. Soorendro Narain Deb...	I. L. R. I. Cal. 109	81, 1475
Moulvie Mahomed Shumsool Hooda v. Shewukram *alias* Roy Doorga Pershad	L. R. II. Ind. App. 7	680

Digitized by Google

Name of Case.	Volume and Page.	Column of Digest.
Moung Shoay Att v. Ko Byaw	L. R. III. Ind. App. 61 I. L. R. I. Cal. 330	456
Mowla Buksh v. Kishen Pertab Sahi	I. L. R. I. Cal. 102	830
Muddun Thakoor v. Kantoo Lall	L. R. I. Ind. App. 321	595
Muhammad Abdool Kadar v. The E. I. Railway Company	L. R. I. Ind. Mad. 375	776
Muhammad Ali v. Kalian Singh	I. L. R. I. All. 659	1443
Muhammad Ewaz v. Birj Lal	I. L. R. I. All. 465	1231
Mulchand v. Balgobind	I. L. R. I. All. 610	1015
Mul Chand Joharimal v. Suganchand Shivdas...	I. L. R. I. Bom. 28	828
Mulo, *In the matter of the Petition of*	I. L. R. II. Bom. 299	263
Mumtaz Hossein v. Brij Mohun Thakoor ...	I. L. R. IV. Cal. 888	270
Mungol Prashad Dichit v. Shama Kanto Lahory Chowdhry	I. L. R. IV. Cal. 708	886
Munia v. Balak Ram	I. L. R. II. Cal. 513	1129
Municipal Committee of Moradabad v. Chattri Singh	I. L. R. II. All. 269	50
Munnoo Lall v. Lalla Choonee Lall	L. R. I. Ind. App. 144	482, 1143
Munsuk Mosundas v. Shivram Devising ...	I. L. R. II. Bom. 532	537
Murarji Gokuldas v. Parvatibai	I. L. R. I. Bom. 177	609, 610
Murch, *In the Goods of*	I. L. R. IV. Cal. 725	69
Murli Dhar v. Parsotam Das	I. L. R. II. All. 91	122, 528
Murlidhar and Vasudev v. Supdu and Balkrishna.	I. L. R. III. Bom. 149	193
Murray, *In re*	I. L. R. III. Cal. 58	783
Murugayi v. Viramakali	I. L. R. I. Mad. 226	661
Muse Ali Adam, *In re*	I. L. R. II. Bom. 653	357
Mussamat Bhagbutti Daee v. Chowdry Bholanath Thakoor	L. R. II. Ind. App. 256	603
Mussamat Bhawani Kuar v. Gulab Rai... ...	I. L. R. I. All. 348	1346
Mussumat Bibi Bechunnissa v. Chowdhri Murtaza Hossein	L. R. III. Ind. App. 209	252
Mussumat Phoolbas Koonwur v. Lalla Jogeshur Sahoy	I. L. R. I. Cal. 226 L. R. III. Ind. App. 7	597, 1144
Mussamut Ganga Jati v. Ghasita	I. L. R. I. All. 46	671
Mussamut Jagesri Kuar v. Ram Nath Bhagat ...	I. L. R. I. All. 371	410
Mussumat Kundu Koowar v. Baboo Doorga Pershad	L. R. I. Ind. App. 55	658
Mussumat Sahebzadee Begum v. Mirza Himmut Bahadoor	L. R. I. Ind. App. 23	943
Muthora Nath Pal v. Chunder Money Dabia ...	I. L. R. IV. Cal. 817	1004
Muthra v. Jawahir...	I. L. R. I. All. 527	384, 440
N.		
Nana bin Lakshman v. Anant Babaji	I. L. R. II. Bom. 353	1224, 1227
Nanak Chand v. Ram Narayan	I. L. R. II. All. 181	147
Nanak Ram v. Mehin Lal...	I. L. R. I. All. 487	305, 325
Nanchand Hansraj v. Bapusaheb Rustambhai...	I. L. R. III. Bom. 131	631, 744
Nand Kumar v. Radha Kuari	I. L. R. I. All. 282	1267
Nanku v. The Board of Revenue	I. L. R. I. All. 444	1392
Narandas v. Bai Manchha	I. L. R. III. Bom. 217	530
Narain Chunder v. Tayler	I. L. R. IV. Cal. 103	864, 1388

Digitized by Google

Name of Case.	Volume and Page.	Column of Digest.
Narain Das, *In the matter of the Petition of* ...	I. L. R. I. All. 610	157
Narain Dhara v. Rakhal Gain	I. L. R. I. Cal. 1	622, 652
Narain Singh v. Shimbhoo Singh ...	L. R. IV. Ind. App. 15 I. L. R. I. All. 325	441
Narain Singh v. Muhammad Faruk	I. L. R. I. All. 277	1147
Narayanacharya v. Nurso Krishna	I. L. R. I. Bom. 262	632
Narayan Bharthi v. Laving Bharthi	I. L. R. II. Bom. 140	392, 625, 635
Narayan Madhavrao Naik v. The Collector of Thana	I. L. R. II. Bom. 145	346
Narayan Undir Patel v. Motilal Ramdas ...	I. L. R. I. Bom. 45	200
Narayanrao Ramchandra Pant v. Ramabai	L. R. VI. Ind App. 114 I. L. R. III. Bom. 415	840, 877
Naranji Bhikhabhai v. Dipa Umed	I. L. R. III. Bom. 8	494
Narhar Singh v. Dirgnath Kuar...	I. L. R. II. All. 407	650
Narsayya Chetti v. Guruvappa Chetti	I. L. R. I. Mad. 378	1228
Narhar Govind Kulkarni v. Narayan Vithal.....	I. L. R. I. Bom. 607	589
Narsinbhat bin Bapubhat v. Chenapa bin Ningapa	I. L. R. II. Bom. 479	675
Narsingdas Rughunathdas v. Tulsiram bin Doulatram	I. L. R. II. Bom. 558	263
Narsingrav Ramachandra v. Luxumanrav	I. L. R. I. Bom. 318	193
Naru Pira v. Maro Shidheshvar	I. L. R. III. Bom. 28	172
Natha Hira v. Janardhan Ramachandra ...	I. L. R. I. Bom. 503	894
Nathu Ganesh v. Kalidas Umed	I. L. R II. Bom. 365	1400
Nathubhai v. Javher Raiji...	I. L. R. I. Bom. 121	609, 616
Nathuni Mahton v. Manraj Mahton	I. L. R. II. Cal. 149	1082
Nawab Syed Ali Hossein Khan and others v. Tacoordeen Tewarry	L. R. I. Ind. App. 192	1097, 1387
Nawab Malka Jahan Sahiba v. Deputy Commissioner of Lucknow	L. R. VI. Ind. App. 68	297
Nazir Khan v. Proladh Dutta	I. L. R. IV. Cal. 659	558
Nehalo v. Kishen Lal	I. L. R. II. All. 150	630
Nehalo v. Nawal	I. L. R. I. All. 428	32
Nellaikumaru Chetti v. Marakathammal ...	I. L. R. I. Mad. 166	604, 682
New Fleming S. & W. Co. (Limited), *In the matter of*	I. L. R. III. Bom. 489 I. L. R. IV. Bom. 275	282, 1125
Nicholls v. Wilson...	I. L. R. IV. Cal. 563	144
Nidhoomoni Debya v. Saroda Pershad Mookerjee	L. R. III. Ind. App. 253	681
Nikka Mal v. Gardner	I. L. R. II. All 193	1030
Nilkunto Dey v. Hurrosoonderee Dossee ...	I. L. R. III. Cal. 414	531
Nil Money Singh Deo v. Chunderkant Banerjee	I. L. R. II. Cal. 125	473
Nilmoney Singh Deo v. Baneshur	I. L. R. IV. Cal. 91	634
Nilmonee Singh Deo v. Rambundhoo Roy ...	I. L. L. IV. Cal. 757	793
Nindan Gavda v. Malan Gavda	I. L. R. I. Bom. 533	417
Nirmul Chandra Mookerjee v. Doyal Natha Bhuttacharjee	I. L. R. II. Cal. 130	1435
Nirod Krishno Roy v. Woomanath Mookerjee..	I. L. R. IV. Cal. 718	931
Nistarni Dasi v. Bonomali Chatterji	I. L. R. IV. Cal. 941	175
Nobin Chunder Dey v. The Secretary of State for India	I. L. R. I. Cal. 11	1327
Nobo Doorga Dossee v. Foyzbux Chowdhry ...	I. L. R. I. Cal. 202	1358

Digitized by Google

Name of Case.	Volume and Page.	Column of Digest.
Nobodeep Chunder Shaha v. Sonaram Dass ...	I. L. R. IV. Cal. 592	175
Nocoor Chunder Bose v. Kally Coomar Ghose...	I. L. R. I. Cal. 328	865
Norender Narain Singh v. Dwarka Lall Munder...	I. L. R. III. Cal. 397 L. R. V. Ind. App. 18	1012
Nowla Ooma v. Bala Dharmaji	I. L. R. II. Bom. 91	1403
Nur Ahmad v. Altaf Ali	I. L. R. II. All. 58	243
Nursey Kessowjee, *In the matter of*	I. L. R. III. Bom. 270	1330
O.		
Oakes v. Jackson	I. L. R. I. Mad. 134	327
Oghra Singh v. Ablakhi Kooer	I. L. R. IV. Cal. 586	41, 1238
Omritolall Dey, *In the matter of*...	I. L. R. I. Cal. 78	1170, 1404
Oodaychurn Mitter, *In the matter of the Petition of*	I. L. R. IV. Cal. 411	214
Oolagappa Chetty v. Arbuthnot	L. R. I. Ind. App. 268, 293, 315	750, 1119
Oriental Bank Corporation and others v. John Fleming and others	I. L. R. II. Bom. 242	208, 1082
P.		
P. Shekari Varma Valia Rajah v. Mangalom Amugar	I. L. R. I. Mad. 57	1076
Palak Dhari Rai v. Radha Prasad Singh ...	I. L. R. II. All. 65	136
Panchcowrie Mull v. Chumroolall	I. L. R. III. Cal. 563	1442
Pandah Gazi v. Jennuddi	I. L. R. IV. Cal. 665	1417
Param Singh v. Lalji Mal...	I. L. R. I. All. 403	487
Paras Ram v. Gardner	I. L. R. I. All. 355	905
Parbhudas v. Motiram	I. L. R. I. Bom. 203	1105
Parbutty Nath Roy Chowdhry v. Mudho Paroe	I. L. R. III. Cal. 276	753
Parichat v. Zalim Singh	I. L. R. III. Cal. 214	634
Parmeshar Rai v. Bisheshar Singh	I. L. R. I. All. 53	505
Parsotam Keshavdas v. Kalyan Rayji	I. L. R. III. Bom. 348	473
Partab Singh v. Beni Ram...	I. L. R. II. All. 61	529
Pasupati Latchmia v. Pasupati Mutham Bhattu.	I. L. R. I. Mad. 52	908
Pauliem Valoo Chetty v. Pauliem Sooryah Chetty	I. L. R. I. Mad. 252	664
Pauliem Sooryah Chetty v. Pauliem Valoo Chetty ... ... Pauliem Valloo Chetty v. Pauliem Sooryah Chetty	L. R. IV. Ind. App. 109	1144
Pearson v. Madhub Chunder Ghose	I. L. R. II. Cal. 337	1390
Periasami v. Periasami.—Ramasami Chetti v. Periasami.—Kosalarama Pillai v. Periasami...	L. R. V. Ind. App. 61	665
Pestonjee Eduljee Guzdur v. Mirza Mahomed Ally	I. L. R. III. Cal. 541	257, 1140
Phate Saheb Bibi v. Damodar Premjee... ...	I. L. R. III. Bom. 84	954
Phul Kuar v. Murli Dhur...	I. L. R. II. All. 527	1034
Phulman Rai v. Dani Kuari	I. L. R. I. All. 452	1152
Piarey Lal v. Saliga	I. L. R. II. All. 394	875
Pitamber Baboo v. Nilmony Singh Deo... ...	I. L. R. III. Cal. 798	861

Digitized by Google

Name of Case.	Volume and Page.	Column of Digest.
Phoolbas Koonwur v. Lalla Jogeshur Sahoy ...	I. L. R. I. Cal. 226	597, 1144
Phukar Singh v. Ranjit Singh	I. L. R. I. All. 661	667
Phulman Rai v. Dani Kuari	I. L. R. I. All. 452	1152
Piarey Lal v. Saliga	I. L. R. II. All. 894	875
Pitamber Narayendas v. Vanmali Shamji ...	I. L. R. II. Bom. 1	1026
Pitam Singh v. Ujagar Singh	I. L. R. I. All. 651	291
Pogose, *In the matter of*	I. L. R. III. Cal. 710	1422
Pogose v. The Bank of Bengal	I. L. R. III. Cal. 174	1165
Pogose v. Catchick	I. L. R. III. Cal. 708	1422
Poonen, *Ex parte*	I. L. R. I. Mad. 174	935
Poona Kooer, *In the matter of the Petition of*...	I. L. R. I. Cal. 101	1287
Poorno Chunder Coondoo v. Prosonno Coomar Sikdar	I. L. R. II. Cal. 123	900
Poran Sookh Chunder v. Parbutty Dossee ...	I. L. R. III. Cal. 612	114, 414
Poresh Narain Roy v. Kassi Chunder Talukdar	I. L. R. IV. Cal. 661	869
Port Canning Land Investment, &c., Company v. Smith	L. R. I. Ind. App. 124	817, 1224
Prabacharrow v. Potannah	I. L. R. II. Mad. 863	913
Prag Das v. Hari Kishan...	I. L. R. I. All. 503	612, 656
Pranshankar Shivshankar v. Govindlal Parbhudas	I. L. R. I. Bom. 467	1328
Pratab Daji v. The Bombay, Baroda, and Central India Railway Company	I. L. R. I. Bom. 52	1206
Prataprao Gujar v. Bayaji Namaji	I. L. R. III. Bom. 141	708
Premchand Burral v. The Collector of Calcutta	I. L. R. II. Cal. 103	793
Prem Narain Singh v. Parasram Singh and Bholonath Singh	L. R. IV. Ind. App. 101	1479
Prem Sukh Das v. Bhupia	I. L. R. II. All. 517	817
Prince Mirza Jehan Kudi Bahadur v. Nawab Assur Bahu Begum	I. L. R. IV. Cal. 727 L. R. VI. Ind. App. 76	298 298
Prosunno Coomaree Debea v. Sheikh Rutton Bepary	I. L. R. III. Cal. 696	814
Prosunno Coomar Sircar v. Ram Coomar Parooey	I. L. R. IV. Cal. 53	1300
Prosunno Chunder Bhuttacharjee v. Kristo Chytunno Pal	I. L. R. IV. Cal. 342	1108
Prosunno Chunder Coondoo v. Prosunno Coomar Sikdar	I. L. R. II. Cal. 123	900
Prosonna Nath Roy Chowdry v. Afzolonnessa Begum	I. L. R. IV. Cal. 523	90
Prosunno Kumari Debya v. Golab Chand Baboo	I. L. R. II. Ind. App. 145	436
Protab Chunder Doss v. Gour Chunder Roy ...	I. L. R. IV. Cal. 132	1163
Purmanund Asrum v. Rookinee Gooptani ...	I. L. R. IV. Cal. 793	470
Puran Mal v. Ali Khan	I. L. R. I. All. 235	248
Purran Chunder Ghose v. Mutty Lall Ghose Jahira	I. L. R. IV. Cal. 50	864
Pursooram Borooah, *In the matter of*	I. L. R. II. Cal. 117	353
Putali Meheti v. Tulja	I. L. R. III. Bom. 228	915, 1257

Digitized by Google

Name of Case.	Volume and Page.	Column of Digest.
Q.		
Quarry, *In the matter of*	I. L. R. II. All. 511	1145
Queen v. Baijoo Lall	I. L. R. I. Cal. 450	378
Queen v. Bholanath Sen	I. L. R. II. Cal. 23	445
Queen v. Gholam Ismail	I. L. R. I. All. 1	365
Queen v. Gobin Tewari	I. L. R. I. Cal. 281	131
Queen v. Gur Bakhsh	I. L. R. I. All. 193	377
Queen v. Hurribole Chunder Ghose	I. L. R. I. Cal. 207	217, 501
Queen v. Jagat Mal	I. L. R. I. All. 162	379
Queen v. Kultaran Singh...	I. L. R. I. All. 129	
Queen on the Prosecution of Morad Ali v. Hadjee Jeebun Bux	I. L. R. I. Cal. 354	578
Queen v. Naiada	I. L. R. I. All. 48	1095
Queen v. Peterson...	I. L. R. I. All. 316	165
Queen v. Thakur Prasad	I. L. R. I. All. 151	372
Queen v. Upendronath Doss	I. L. R. I. Cal. 356	232, 577
Queen v. Zuhirruddin	I. L. R. I. Cal. 219	353
R.		
R. S. Joshi v. L. B. Joshi...	I. L. R. II. Bom. 650	1002
Radha Proshad Singh v. Ramcoomar Singh ...	I. L. R. III. Cal. 796	95
Radhabai v. Chimaji bin Ramji Sali	I. L. R. III. Bom. 27	1328
Radhabai v. Ganesh Tatya Gholap	I. L. R. III. Bom. 7	585, 678
Radhabai v. Nanarav	I. L. R. III. Bom. 151	671
Radhia v. Bani	I. L. R. I. All. 560	1269
Raghapa v. Parapa	I. L. R. I. Bom. 217	760
Raghoji Bhikaji v. Abdul Karim...	I. L. R. I. Bom. 590	886
Raghubanund Doss v. Sadhu Churn Doss ...	I. L. R. IV. Cal. 425	659
Raghumoni Audhikary v. Nilmoni Singh Deo...	I. L. R. II. Cal. 393	893
Raghu Nath Das v. Ashraf Husain Khan ...	I. L. R. II. All. 252	1386
Raghu Ram v. Dannu Lal	I. L. R. II. All. 285	870
Rahi v. Govinda.....	I. K. R. I. Bom. 97	624
Rahmani Bibi v. Hulasa Kuar	I. L. R. I. All. 642	17
Rahimatbai v. Hirbai	I. L. R. III. Bom. 34	789
Rai Komul Dossee v. J. W. Laidley	I. L. R. IV. Cal. 957	1310
Rai Narain Dass v. Nownit Lal and Bunwari Lal...	I. L. R. IV. Cal. 809	672
Raj Bahadoor Singh v. Achumbit Lal	L. R. VI. Ind. App. 110	900
Raj Chunder Roy v. Shama Soondari Debi ...	I. L. R. IV. Cal. 583	396
Raj Koomar Singh v. Sahebzada Roy	I. L. R. III. Cal. 20	1213, 1325
Raja Barda Kant Rai v. Bhagwan Das... ...	I. L. Rep. I. All. 344	741, 1027
Raja Ram v. Bansi	I. L. R. I. All. 207	1150
Rajah Kishen Dutt Ram Panday v. Narendar Bahadoor Singh...	L. R. III. Ind. App. 85	42
Rajah Muttu Ramalinga Setupati v. Perianayagum Pillai	L. R. I. Ind. App. 209	988, 1248
Rajah Sri Chaitanya Chundra v. Collector of Ganjam	L. R. I. Ind. App. 335	869
Rajcoomaree Dossee v. Gopaul Chunder Bose...	I. L. R. III. Cal. 514	582
Rajah Parichat v. Zalim Singh	L. R. IV. Ind. App. 159	648

Digitized by Google

Name of Case.	Volume and Page.	Column of Digest.
Rajah Vellanki Venkata Krishna Row v. Venkata Rama Lakshmi Narsayya ...	L. R. IV. Ind. App. 1 I. L. R. I. Mad. 174	588
Rajah Vurmah Valia v. Ravi Vurmah Mutha	L. R. IV. Ind. App. 76 I. L. R. I. Mad. 235	94
Rajah Nilmoney Singh v. Kally Churn Battacharjee...	L. R. II. Ind. App. 83	408
Rajah Kishendatt Ram v. Rajah Mumtaz Ali Khan	L. R. VI. Ind. App. 145	1014, 1027
Rajah Bhagwan Bax and another v. Ramjisdass and Imtiaz Ali	L. R. V. Ind. App. 197	1076
Raja valad Shivapa v. Krishnabhat	I. L. R. III. Bom. 232	449, 1063
Rajkishen Singh v. Ramjoy Surma Mozoomdar.	I. L. R. I. Cal. 186	548
Rajkishore Lahoory v. Gobind Chunder Lahoory	I. L. R. I. Cal. 27 L. R. IV. App. 153	617
Rajendronath Mookhopadhya v. Bassider Ruhman Khondkhar...	I. L. R. II. Cal. 146	813
Rajpati Singh v. Ram Sukhi Kuar	I. L. R. II. All 40	1229
Raju Balu v. Krishnarav Ramchandra	I. L. R. II. Bom. 273	1185, 1236
Ralli v. Fleming	I. L. R. III. Cal. 417	1464
Ramakrishna Chetti v. Palanyandi Kudambar...	I. L. R. I. Mad. 262	1102
Ramaddin v. Mahesh	I. L. R. II. All. 471	118
Ramanand v. The Bank of Bengal	I. L. R. I. All. 377	116
Ramanund Koondoo v. Chowdhry Soonder Narain Sarungy...	I. L. R. IV. Cal. 331	1163
Rama Rao v. Suriya Rao...	I. L. R. I. Mad. 84	1271
Ramasami v. Bhaskarsami	I. L. R. II. Mad. 67	1225
Ramasami Aiyan v. Venkatramaiyan ...	I. L. R. II. Mad. 91 L. R. VI. Ind. App. 196	592
Ramasami v. Theruvengadasami	I. L. R. I. Mad. 340	771
Ramasawmi Chetti v. The Collector of Madura	L. R. VI. Ind. App. 170 I. L. R. II. Mad. 67	1225
Ram Autar v. Ajudhia Singh	I. L. R. I. All. 231	905
Rambhat Agnihotri v. The Collector of Puna...	I. L. R. I. Bom. 592	1156
Ramchandra v. Somar	I. L. R. I. Bom. 305	858, 865
Ramchandra Chintaman v. Kalu Raju	I. L. R. II. Bom. 362	708
Ramchandra Lakshmanji, *In the matter of the Will of*	I. L. R. I. Bom. 118	1178
Ramchandra Mankeshwar v. Bhimrao Ravji ...	I. L. R. I. Bom. 577	632, 983, 1001
Ramchandra Sakharam Vagh v. Shakharam Gopal Vagh..	I. L. R. II. Bom. 346	633, 1373
Ram Chunder Chuckerbutty v. Brojonath Mozumdar	I. L. R. IV. Cal. 929	91
Ram Chunder Ghusaol v. Juggutmonmohiney Dabee	I. L. R. IV. Cal. 283	867
Ram Coomar Coondoo v. Chunder Canto Mookerjee	L. R. IV. Ind. App. 23 I. L. R. II. Cal. 233	228
Ram Coomar Paul v. Jogender Nath Paul ...	I. L. R. IV. Cal. 56	658
Ram Dial v. Ram Das	I. L. R. I. All. 181	119
Ram Dial v. Gulab Singh	L. L. R. I. All. 26	60
Ram Doolary Kooer v. Thacoor Roy	I. L. R. IV. Cal. 61	1228
Ramdoyal Khan v. Ajoodhia Ram Khan ...	I. L. R. II. Cal. 1	100, 287

Digitized by Google

Name of Case.	Volume and Page.	Column of Digest.
Ramesshur Pershad Narain Singh v. Koonj Behari Pattuk...	I. L. R. IV. Cal. 633 L. R. IV. Ind. App. 38	155
Ram Ghulam v. Chotey Lal	I. L. R. II. All. 46	1237
Ram Gholam v. Sheo Tahal	I. L. R. I. All. 266	119
Ramjas v. Baij Nath	I. L. R. II. All. 567	128
Ramjisdas and Imtiaz Ali v. Raja Bhagwan Bax and another...	I. L. R. V. Ind. App. 197	1076
Ram Kishan v. Bhawani Das	I. L. R. I. All. 333	893
Ram Kishen v. Shedu	I. L. R. II. All. 275	260
Ramnandan v. Shrinivasa Murthi	I. L. R. II. Mad. 80	819
Ramnath Tolapattro v. Durga Sundari Debi ...	I. L. R. IV. Cal. 550	611
Ramkishn Doss v. Luckey Narrain	I. L. R. III. Cal. 312	1140
Ram Lall Singh v. Lill Dharry Muhton... ...	I. L. R. III. Cal. 776	955
Ram Needhee Koondoo v. Rajah Rughoo Nath Nath Narain Mullo	I. L. R. I. Cal. 456	408
Raminihi Nayar, *In the matter of*	I. L. R. I. Mad. 266	1099
Ram Rotton Mundul v. Netro Kally Dassee...	I. L. R. IV. Cal. 339	466
Ram Sabuk Bose v. Monmohini Dossee ...	L. R. II. Ind. App. 71	185
Ramsoonder Sandyal v. Gopessur Mostofee ...	I. L. R. III. Cal. 715	910
Ram Sunker Senaputty v. Bir Chunder Manikya.	I. L. R. IV. Cal. 714	177
Ram Tarrun Koondoo v. Hossein Buksh ...	I. L. R. III. Cal. 785	236
Ram Tuhul Singh v. Biseswar Lall Sahoo and Soodisht Lall	L. R. II. Ind. App. 131	1356
Raman v. Karunatha	I. L. R. II. Mad. 201	1287
Ranchoddas Dayaldas v. Ranchoddas Nanabhai.	I. L. R. I. Bom. 581	191
Ranee of Chilloree v. The Government of India.	L R. IV. Ind. App. 208,n.	43
Ranee Khajooroonissa v. Ranee Ryeesoonissa...	L. R. II. Ind. App. 235	945
Ranee Khujooroonissa v. Mussamut Roushun Jehan	L. R. III. Ind. App. 291 I. L. R. II. Cal. 184	943, 1296
Ranee Sonwet Konwar v. Mirza Himmut Bahadoor, Mussamut Bismullah Begum, and Mussamat Sahibzadee Begum	I. L. R. I. Cal. 891 L. R. III. Ind. App. 92	481
Rango Venayek v. Yamunabai	I. L. R. III. Bom. 44	637
Rani Mewa Kuwar v. Rani Hulas Kuwar ...	L. R. I. Ind. App. 157	289
Ranjit Singh v. Sheo Prasad Ram	I. L. R. II. All. 487	1122
Rash Behary Bundopadhya v. Peary Mohun Mookerjee	I. L. R. IV. Cal. 346	816
Ratan Kuar v. Jiwan Singh	I. L. R. I. All. 194	1065
Ratan Singh v. Wazir	I. L. R. I. All. 165	224
Rattansi Kalianji, *In the matter of the Petition of*	I. L. Rep. II. Bom. 148	270
Raychurn Dutt v. Ameena Bibi	I. L. R. II. Cal. 385	1390
Raynor v. The Mussoorie Bank...	I. L. R. IV. All. 55	1506
Ravji Narayen Mandlik v. Dadaji Bapuji Desai Mamlatdar of Ratnagiri	I. L. R. I. Bom. 523	306, 1105
Reasut Hossein v. Hadjee Abdoollah ...	I. L. R. II. Cal. 131 L. R. II. Ind. App. 221	1289
Reg. v. Acharjys	I. L. R. I. Mad. 224	1100
Reg. v. Adivigadu	I. L. R. I. Mad. 171	354
Reg. v. Ambigara Hulagu	I. L. R. I. Mad. 163	499
Reg. v. Arunachellam	I. L. R. I. Mad. 161	1102

Digitized by Google

Name of Case.	Volume and Page.	Column of Digest.
Reg. v. Baiju Lall	I. L. R. I. Cal. 450	378
Reg. v. Balapa	I. L. R. I. Bom. 639	361
Reg. v. Bhista bin Madanna	I. L. R. I. Bom. 308	32, 304
Reg. v. Bholanath Sen	I. L. R. II. Cal. 23	445
Reg. v. Budhu Nanu	I. L. R. I. Bom. 475	499
Reg. v. Devama	I. L. R. I. Bom. 64	287, 363, 379
Reg. v. Gaji kom Ranu	I. L. R. I. Bom. 311	547
Reg. v. Gholam Ismail	I. L. R. I. All. 1	365
Reg. v. Gobin Tewari	I. L. R. I. Cal. 281	131
Reg. v. Govinda	I. L. R. I. Bom. 342	1037
Reg. v. Gur Baksh...	I. L. R. I. All. 193	377
Reg. v. Hadjee Jeebun Bux	I. L. R. I. Cal. 354	576
Reg. v. Hanmanta...	I. L. R. I. Bom. 610	12,192, 375, 595, 1456
Reg. v. Hanmant Govda	I. L. R. I. Bom. 228	192
Reg. v. Haribole Chunder Ghose...	I. L. R. I. Cal. 207	217, 501
Reg. v. Jagat Mul	I. L. R. I. All. 162	379
Reg. v. Kandakora...	I. L. R. I. Mad. 223	932
Reg. v. Khanderav Bajirav	I. L. R. I. Bom. 10	360
Reg. v. Kulkaran Singh	I. L. R. I. All. 129	379
Reg. v. Lakhya Govind	I. L. R. I. Bom. 50	354
Reg. v. Lalubhai Gopaldas	I. L. R. I. Bom. 232	575
Reg. v. Locha Kala	I. L. R. I. Bom. 340	357
Reg. v. Maruti Dada	I. L. R. I. Bom. 15	4, 21
Reg. v. Muhammad Saib	I. L. R. I. Mad. 277	370
Reg. v. Muthavan	I. L. R. I. Mad. 191	288
Reg. v. Naida	I. L. R. I. All. 43	1095
Reg. v. Parsapa Mahadevapa	I. L. R. I. Bom. 339	378
Reg. v. Peterson	I. L. R. I All 36	165
Reg. v. Pitamber Jina	I. L. R. II. Bom. 61	1130, 1382
Reg. v. Pyla Atchi	I. L. R. I. Mad 278	937
Reg. v. Rahimat	I. L. R. I. Bom. 147	288
Reg. v. Rama Bhivgovda	I. L. R. I. Bom. 223	130
Reg. v. Ramasami Padayachi	I. L. R I. Mad. 394	500
Reg. v. Sambhu Raghu	I. L. R. I. Bom. 347	1103
Reg. v. Samia Kaundan	I. L. R. I. Mad. 173	6
Reg. v. Shiva	I. L. R. I. Bom. 219	499
Reg. v. Thakur Parshad	I. L. R. I. All. 151	372
Reg. v. Tukaya bin Tamana	I. L R. I. Bom. 214	333
Reg. v. Upendronath Doss	I. L. R. I. Cal 232	575
Reg. v. Vithaldas Pranjivandas	I. L. R. I. Bom. 462	575
Reg. v. Zuhiruddin	I. L. R. I. Cal. 219	33
Remfry v. Shillingford	I. L. R. I. Cal. 130	40
Rowson v. Hanama Mestri	I. L. R. I. Mad. 280	30
Roychurn Dutt v. Ameenabibi	I. L. R. II. Cal. 385	1390
Roy Meghraj v. Beejoy Gobind Burral	I. L. R. I. Cal. 197	1286
Roymoney Dossee, *In the Goods of*	I. L. R. I. Cal. 150	166
Rudr Narain Singh v. Rup Kuar...	I. L. R. I. All. 734	615
Rughoobur Dyal Sahoo v. Maharajah Kishen Pertab Sahee	L. R. VI. Ind. App. 211	13
Ruka Bai v. Ganda Bai	I. L. R. I. All. 594	643
Rukmin, *In the matter of the Petition of* ...	I. L. R. I. All. 287	119

Digitized by Google

Name of Case.	Volume and Page.	Column of Digest.
Runglall Misser v. Tokhun Misser	I. L. R. II. Cal. 114	239
Rungo Lall Mundul v. Abdool Guffoor	I. L. R. IV. Cal. 314	815
Rungubai v. Bhagirthibai	I. L. R. II. Bom. 377	590
Runjeet Singh v. Kooer Gujraj Singh	L. R. I. Ind. App. 9	658
Runjit Singh v. Meherban Kooer, and other cases	I. L. R. III. Cal. 668	115
Rushton, *In the Goods of*	I. L. R. III. Cal. 736	347
Rustomji Burjorji v. Kessowji Naik	I. L. R. III. Bom. 161	11, 256
Ryall v. Sherman	I. L. R. I. Mad. 287	240
S.		
Sabapathi v. Subraya and Ramanadha	I. L. R. II. Mad. 58	37, 1291
Sadasiva Pillai v. Ramalinga Pillai	L. R. II. Ind. App. 219	975
Sadik Ali Khan v. Muhammad Hussain Khan...	I. L. R. II. All. 384	535
Sadodin v. W. Spiers	I. L. R. III. Bom. 437	122, 730
Safdar Ali Khan v. Lachman Das	I. L. R. II. All. 554	1223
Sah Koondun Lall v. Sah Mukhun Lall Panday.	L. R. II. Ind. App. 210	1220
Sah Mukhun Lall Panday v. Sah Koondun Lall.	L. R. II. Ind. App. 210	1220
Sahai Pandey v. Sham Narain	I. L. R. II. All. 142	1009
Sahib Zadah v. Parmeshar Das	I. L. R. I. All. 524	1028
Sahibzada Ahmed Raza Khan and others v. Sahibzada Zeinulabdin Khan	L. R. V. Ind. App. 233 I. L. R. II. All. 67	239
Sakharam Dikshit v. Ganesh Sathe	I. L. R. III. Bom. 193	897
Sakharam Sadhashiv Adhikari v. Sitabai ...	I. L. R. III. Bom. 353	608, 626, 628
Salamat Ali v. Budh Singh	I. L. R. I. All. 303	303
Sallu Ganesh v. Runchod Kahandas	I. L. R. II. Bom. 641	256
Sameer Mull and Chundun Mull v. Chogalall ...	L. R. IV. Ind. App 238	1161
Saminada Pillai v. Subba Reddiar	I. L. R. I. Mad. 333	1089
Sarasuti v. Mannu	I. L. R. II. All. 134	415, 628
Sarawak, &c., Banking and Trading Co., *In the matter of*	I. L. R. IV. Cal. 704	283
Saroda Pershad Mookerjee v. Nidhoomoni Debya	L. R. III. Ind. App. 253	681
Sarubai v. Bapu Narhar Sohoni	I. L. R. II. Bom. 660	844
Sathu valad Kadir Sausare v. Ibrahim Aga valad Mirza Aga	I. L. R. II. Bom. 457	1323
Satra Kumaji v. Visram Hasgavada	I. L. R. II. Bom. 97	1223
Savitribai v. Luximibai	I. L. R. II. Bom. 573	633, 649
Sayad Mir Ujmudin Khan valad Mir Khamruddin Khan v. Zia-ul-Nissa Begam ...	I. L. R. III. Bom. 422 L. R. VI. Ind. App. 187	22
Sayud Chanda Miah Saib v. Lakshmana Aiyangar	I. L. R. I. Mad. 45	934
Seale v. Brown	I. L. R. I. All. 710	541
Secretary of State for India v. Sir Albert Sassoon	I. L. R. I. Bom. 513	798
Seshadri Ayyangar v. Saudanam...	I. L. R. I. Mad. 140	933
Seths Gujmull, Jeithmull, and Thanmull v. Mussumat Chahee Kowar	L. R. II. Ind. App. 34	1139
Seth Gokul Dass Gopal Dass v. Murli and Zalim	I. L. R. III. Cal. 602	318, 745
Shafi-ud-din v. Lochan Singh	I. L. R. II. All. 94	264
Shaikh Ewaz v. Mokuna Bibi	I. L. R. I. All. 132	1151
Sham Kuar v. Gaya Din	I. L. R. I. All. 255	617
Sham Churn Auddy v. Tariney Churn Banerjee	I. L. R. I. Cal. 422	460, 1461

Digitized by Google

Name of Case.	Volume and Page.	Column of Digest.
Shama Churn Mullik, *In the Goods of*	I. L. R. I. Cal. 52	1176
Sham Narain Singh v. Rughooburdyal	I. L. R. III. Cal. 508	606
Shankar bin Marabasapa v. Hama bin Bhima ...	I. L. R. II. Bom. 470	448, 1445
Shankar Ramachandra v. Vishnu Anant... ...	I. L. R. I. Bom. 67	304, 1284
Sharat Chunder Burmon v. Hurgobindo Burmon.	I. L. R. IV. Cal. 510	1088
Sheen v. Johnson	I. L. R. II. All. 368	119
Sheikh v. Khoorshed Hoossein v. Nubbee Fatima	I. L. R. III. Cal. 551	426
Shekari Varma Valliah Rajah v. Mangolam Amugar	I. L. R. I. Mad. 57	1076
Sheo Soondary v. Pirthee Singh	L. R. IV. Ind. App. 147	618
Sheo Singh Rai v. Mussumut Dakho ...	L. R. V. Ind. App. 87 I. L. R. I. All. 688	413, 751, 1146
Sheo Gholam Sahoo v. Rahut Hossein	I. L. R. IV. Cal. 6	529
Sheo Prasad v. Anrudha Singh	I. L. R. II. All. 273	912
Sheo Prasad v. Miller	I. L. R. II. All. 474	1491
Shepherd v. The Trustees of the Port of Bombay.	I. L. R. I. Bom. 132, 477	729, 841
Sheth Kahandas Narandas v. Dahiabhai ...	I. L. R. III. Bom. 182	690, 885
Shib Dat v. Kalka Prasad...	I. L. R. II. All. 443	904
Shib Gopal v. Baldeo Sahai	I. L. R. II. All. 264	259
Shib Lal v. Hira Lal	I. L. R. I. All. 623	413
Shib Prokash Singh v. Sardar Doyal Singh ...	I. L. R. III. Cal. 544	1349
Shib Narain Shaha v. Bipin Behary Biswas ...	I. L. R. III. Cal. 512	583
Shimbhu Narain Singh v. Bachcha	I. L. R. II. All. 200	1261
Shiro Kumari Debi v. Gobind Shaw Tanti ...	I. L. R. I. Cal. 418	408
Shivlal Khubchand v. Apaji Bhivrav	I. L. R. II. Bom. 654	253
Shodone Mohaldar v. Halalkhore Mohaldar ...	I. L. R. IV. Cal. 645	157
Shoshi Mohun Pal Chowdhry v. Nobo Kristo Poddar	I. L. R IV. Cal. 801	1361
Showers v. Seth Gobind Das	I. L. R. I. All. 400	1347
Shringarpure v. Pethe	I. L. R. II. Bom. 602	1001, 1083, 1221
Shufferudin v. Ibrahim	I. L. R. III. Cal. 754	384
Shugan Chand v. The Government, North-Western Provinces	I. L. R. I. All. 79	323
Shunker Sahai (Widow of) v. Rajah Kashi Pershad	L. R. IV. Ind. App. 198. n.	48
Shurnomoyee v. Pattarri Sirkar...	I. L. R. IV. Cal. 625	977
Sib Chunder Mullick v. Kishen Dyal Opadhya.	I. L. R. I. Cal. 476	1402
Sibo Prosad, *In the matter of the Petition of* ...	I. L. R. IV. Cal. 124	431
Sidlingapa v. Sidava	I. L. R. II. Bom. 625, 634	650, 651, 1034, 1400
Sini Thiruvengadathiengar v. Sangiliveerapa Pandya Chinnathumbiar	I. L. R. I. Mad. 65	407
Sirdar Bhagwan Singh v. The Secretary of State for India in Council	L. R. II. Ind. App. 38	64
Sital v. Madho	I. L. R. I. All. 894	618
Sitaram Vasudev v. Khanderav Balkrishna ...	I. L. R. I. Bom. 286	805, 1155
Sivagnana Tevar v. Periasami	I. L. R. I. Mad. 312	
Skinner v. Orde	I. L. R. I. All. 280 I. L. R. II. All. 241 L. R. VI. Ind. App. 126	1111, 1113
Smith v. The Secretary of State	I. L. R. III. Cal. 340	1265

Digitized by Google

Name of Case.	Volume and Page.	Column of Digest.
Sobha Bibee v. Mirza Sakhamut Ali	I. L. R. III. Cal. 871	84
Sohan Lal v. Karim Baksh	I. L. R. II. All. 281	261
Somasundaram Chetti v. Administrator-General	I. L. R. Mad. 148	71
Soudaminey Dossee v. Jogesh Chunder Dutt ...	I. L. R. II. Cal. 262	655, 682
Sonet Kooer v. Himmut Bahadoor	I. L. R. I. Cal. 391	481
Sooltan Chund v. Schiller	I. L. R. IV. Cal. 252	322
Soonder Narain v. Bennud Ram	I. L. R. IV. Cal. 76	1302
Soorja Kant Acharj Chowdhry, *In the matter of the Petition of*	I. L. R. I. Cal. 383	183, 1420
Soorjmukhi Koer, *In the matter of the Petition of*	I. L. R. II. Cal. 272	63
Sreenarain Bagchee v. Smith	I. L. R. IV. Cal. 807	1358
Sreemutty Nittokissoree Dossee v. Jogendro Nauth Mullick	L. R. V. Ind. App. 55	639
Sreeram Chandra Lerkan v. Bipindas	I. L. R. IV. Cal. 710	558
Sri Gajapathi Nilamani Patta Maha Devi Garu v. Sri Gajapathi Radhamani Patta Maha Devi Garu	L. R. III. Ind. App. 212 I. L. R. I. Mad. 290	630
Sriram Chandra Lerkan v. Bipindas	I. L. R. IV. Cal. 710	558
Sri Raghunadha v. Sri Brozo Kishoro ...	L. R. III. Ind. App. 154 I. L. R. I. Mad. 69	567, 757, 1428
Srimati Uma Deyi v. Gokoolanund Das Mahapatra	L. R. V. Ind. App. 40	586, 619
Srinivasa v. Emperumana	I. L. R. II. Mad. 42	934
Sri Shankar Bharti v. Sidha Singaya Charantai.	I. L. R. II. Bom. 478	1445
Stowell v. Billings	I. L. R. I. All. 350	860
Strimathoo Moothoo Vijia Ragoonadah Ranee Kolandapuree Natchiar v. Dorasinga Tever.	L. R. II. Ind. App. 169	405
Subba Aitala, *In the matter of*	I. L. R. I. Mad. 304	130
Subbaiyar v. Kristnaiyar...	I. L. R. I. Mad. 383	1088
Subhabhat bin Babanbhat v. Vasudevbhat bin Subhabhat	I. L. R. II. Bom. 113	1338
Subramaniya Ayyar v. Ramchandra Rau ...	I. L. R. I. Mad. 335	462, 889
Suddurtonnessa v. Majada Khatoon	I. L. R. III. Cal. 694	933
Suganchand Shivda v. Moolchand Joharimal	XII. Bom. H. C. 113 I. L. R. I. Bom. 23	828
Sukhai v. Daryai	I. L. R. I. All. 374	247
Sukhbasi Lal v. Guman Singh	I. L. R. II. All. 366	592
Sukho v. Durga Prasad	I. L. R. II. All. 448	369
Sultan Kuar v. Gulzari Lal	I. L. R. II. All. 290	262
Sumar Ahmed v. Haji Ismail Haji Habib ...	I. L. R. I. Bom. 153	303, 1140
Sumbhoo Narain Singh v. Bachoba	I. L. R. II. All. 208	1261
Sundar v. Khuman Singh	I. L. R. I. All. 610	770
Suraj Bunsi Koer v. Sheo Proshad Singh ...	L. R. VI. Ind. App. 88	599, 660
Surbomungola Dabee v. Mohendronath Nath...	I. L. R. IV. Cal. 508	678
Surdharee Loll v. Mansoor Ally Khan	I. L. R. III. Cal. 298	778
Surjan Singh v. Jagan Nath Singh	I. L. R. II. All. 313	1021
Surju Prasad v. Bhawani Sahai...	I. L. R. II. All. 481	1222
Surnomoyee Dabee v. Koomar Purresh Narain Roy	I. L. R. IV. Cal. 576	1333
Surutram Bhaya v. The G. I. P. Railway Company	I. L. R. III. Bom. 96	1203

Digitized by Google

Name of Case.	Volume and Page.	Column of Digest.
Suryaprakasa Rau v. Vaisya Sanniasi Razu ...	I. L. R. I. Mad. 401	273
Suttya Ghosal v. Suttyanund Ghosal	I. L. R. I. Cal. 388	959
Syad Mir Ujmuddin Khan v. Zia-ul-Nissa Begam and Rahim-ul-Nissa Begam	I. L. R. III. Bom. 422	22
Syed Moidin v. Sundramutra	I. L. R. II. Mad. 9	264
Syud Bazayet Hossein and others v. Dooli Chund	L. R. V. Ind. App. 211 I. L. R. IV. Cal. 402	952
Sayud Mahomed Hossein v. Hadzi Abdullah ...	I. L. R. III. Cal. 727	116
T.		
Tacoordeen Tewarry v. Nawab Syed Ali Hossein Khan and others	L. R. I. Ind. App. 192	1077, 1387
Tagore v. Tagore	L. R. I. Ind. App. 387	1509
Taj-ud-Din Khan v. Ram Prasad Bhagat ...	I. L. R. I. All. 217	55
Tarachand Biswas v. Ram Gobind Chowdhry ...	I. L. R. IV. Cal. 778	398, 816
Tarachand Hirchand v. Lakshman Bhavan ...	I. L. R. I. Bom. 91	2, 982
Tarini Churn Brohmo v. Bamasoonderee Dossee	I. L. R. IV. Cal. 128	111
Taru Patur v. Abinash Chunder Dutt	I. L. R. IV. Cal. 79	753
Taufik-un-nissa v. Gholam Kambar	I. L. R. I. All. 506	946
Teagaraya Mudali v. Mariappa Pillai	I. L. R. I. Mad. 264	888
Tej Ram v. Harsukh	I. L. R. I. All. 101	1420
Tekait Doorga Persad Singh v. Tekaitni Doorga Kunwari	L. R. V. Ind. App. 149 I. L. R. IV. Cal. 190	1253
Terietput Singh v. Gossain Sudersan Das ...	I. L. R. IV. Cal. 46	1423
Tetley v. Jai Shankar	I. L. R. II. All. 726	137
Thakur Durriao Singh v. Thakur Davi Singh...	L. R. I. Ind. App. 1	658, 1145
Thakoor Hardeo Bux v. Thakoor Jawahir Singh	L. R. IV. Ind. App. 178 L. R. VI. Ind. App. 161	45, 46, 136, 756
Thakoor Jeebnath Singh v. The Court of Wards	L. R. II. Ind. App. 163	621
Thakoor Kapilnath Sahai v. The Government	I. L. R. I. Cal. 142	137
Thakur Prasad v. Ashan Ali	I. L. R. I. All. 668	124
Thakur Shere Bahadur Singh v. Thakurain Dariao Kuar	I. L. R. III. Cal. 645	46
Thamman Singh v. Ganga Ram...	I. L. R. II. All. 342	423
Thomson's Policy, *In the matter of*	I. L. R. III. Cal. 347	1413
Thumbusami Moodelly v. Hoossain Rowthen	I. L. R. I. Mad. 1 L. R. II. I. A. 241	1011
Thumbasawmy Mudelly v. Mahomed Hossain Rowthen	L. R. II. Ind. App. 241	1011
Tiery v. Kristodhun Bose and others..... ...	L. R. I. Ind. App. 76	466
Tiluck Chand v. Soudamini Dasi...	I. L. R. IV. Cal. 566	1317
Timal Kuari v. Ablakh Rai	I. L. R. I. All. 254	884
Tiru Krishnama Chariar v. Krishnasawmi Tata Chariar	I. L. R. II. Mad. 62 L. R. VI. Ind. App. 120	455
Tirthanund Thakoor v. Mutty Lall Misser ...	I. L. R. III. Cal. 774	1465
Toondun Singh v. Pokhnarain Singh	L. R. I. Ind. App. 342	22, 1391
Torit Bhoosun Bonnerjee v. Taraprosonno Bonnerjee	I. L. IV. Cal. 756	1082
Tota Ram v. Sher Singh	I. L. R. I. Cal. 261	56
Treepoorasoondery Dossee v. Debendronath Tagore	I. L. R. II. Cal. 45	215, 897, 1502

Digitized by Google

Name of Case.	Volume and Page.	Column of Digest.
Trimalrav Raghavendra v. The Municipal Commissioners of Hubli	I. L. R. III. Bom. 172	1487
Troylokhanath Biswas and Ram Churn Biswas, *In the matter of*	I. L. R. III. Cal. 742	1249
Tukaram bin Atmaram v. Ramachandra bin Budharam	I. L. R. I. Bom. 314	1003
Tukaram Vithal, *In re*	I. L. R. II. Bom. 527	196
Tulsi Ram v. Ganga Ram...	I. L. R. I. All. 252	235
U.		
Ubilack Rai v. Dallial Rai...	I. L. R. III. Cal. 557	503
Uda Begam v. Imam-ud-din	I. L. R. II. All. 74	19
Uda Begum v. Imam-ud-din	I. L. R. I. All. 82	125
Udai Singh v. Bharat Singh	I. L. R. I. All. 456	534
Udai Singh v. Jagan Nath	I. L. R. I. All. 135	1386
Umabai, widow of Shankarrav v. Bhavu Padmanji	I. L. R. I. Bom. 557	610
Umbica Churn Goopta v. Madhub Ghosal ...	I. L. R. IV. Cal. 870	870
Umbika Nundun Biswas, *In re*	I. L. R. III. Cal. 434	783
Umedmal Motiram v. Davu bin Dhondiba	I. L. R. II Bom. 547	710
Umiashankar Lakhmiram v. Chhotalal Vajaram.	I. L. R. I. Bom. 19	304, 901
Umrao Begam v. The Land Mortgage Bank.	I. L. R. II. All. 451 I. L. R. I. All. 547	54 54
Unnoda Churn Dass Biswas v. Mothura Nath Dass Biswas	I. L. R. IV. Cal. 860	1365
Unnoda Persad Roy v. Sheik Koorpan Ally ...	I. L. R. III. Cal. 511	909
V.		
V. K. Gurjar v. V. D. Barve	I. L. R. II. Bom. 673	900
Vaithelinga v. Saminada	I. L. R. II. Mad. 44	327
Valaji Isaji v. Thomas	I. L. R. I. Bom. 190	1226
Valia Tamburatti v. Vira Rayan...	I. L. R. I. Mad. 228	888
Vardala Charri, *In the matter of the Petition and Schedule of*	I. L. R. II. Mad. 15	734
Vaughan v. Heseltine	I. L. R. I. All. 753	1503
Vasudev Anant v. Ramkrishna and Shivram Narayan	I. L. R. II. Bom. 529	191, 708
Vasudev Sadashive Modak v. The Collector of Ratnagiri	I. L. R. II. Bom. 99 L. R. IV. Ind. App. 119	1107
Vedavalli v. Narrayana	I. L. R. II. Mad. 19	1063
Vellanki Venkata Krishna Rao v. Venkata Rama Lakshmi	I. L. R. I. Mad. 174	588
Venayek Ramachandra, *In re*	I. L. R. I. Bom 188	178
Venkatanarasammah v. Ramiah...	I. L. R. II. Mad. 108	1022
Venkataramayyan v. Venkata Subramania Dikshatar	I. L. R. I. Mad. 358	1349
Venkatesa v. Sengoda	I. L. R. II. Mad. 117	1404
Venkatasami Naik v. Kuppaiyan...	I. L. R. I. Mad. 354	1353
Venkata Ram Rau v. Venkata Suriya Rau Venkata Rama Lakshmi Narsayya v. Rajah Vellanki Venkata Krishna Row ...	I. L. R. I. Mad. 281 L. R. I. Ind. App. 1	604, 667, 682

Digitized by Google

Name of Case.	Volume and Page.		Column of Digest.
Venkittarama Pittar v. Kambarath Keshav Memon	I. L. R. I. Mad.	349	324
Veribhai v. Raghabhai	I. L. R. I. Bom.	225	1037
Viraramuthi Udaya v. Singaravelu	I. L. R. I. Mad.	306	625, 634
Vishnu Bhau Joshi v. Raoji Bhau Joshi... ...	I. L. R. III. Bom.	18	149
Vishnubhat v. Babaji	I. L. R. III. Bom.	145	704, 982
Vishvanath v. Mahadaji	I. L. R. III. Bom.	147	709
W.			
Wagji Korji v. Tharia Topan	I. L. R. III. Bom.	58	1517
Walji Karimji v. Jaganath Premji	I. L. R. II. Bom.	84	1408
Wali-ul-la v. Ghulam Ali	I. L. R. I. All.	535	1048
Wallace v. Jefferson	I. L. R. II. Bom.	453	786
Watson v. Aga Mehedee Sherazee	L. R. I. Ind App.	340	10, 878
Watson and Co. v. Dhonendra Chunder Mookerjee...	I. L. R. III. Cal.	6	859, 1268
Wemyss, *In the Goods of*...	I. L. R. IV. Cal.	721	1177
White, *In the Goods of*	I. L. R. IV. Cal.	582	
Widow of Shunkur Sahai v. Rajah Kali Pershad	L. R. IV. I. A.	198	43
Wilayat-un-nissa v. Najib-un-nissa	I. L. R. I. All.	583	117
Williams v. Williams	I. L. R. III. Cal.	688	451
Wilson, *In the Goods of*	I. L. R. I. Cal.	149	715
Womda Khanum v. Rajroop Koer	I. L. R. III. Cal.	335	244
Wood v. Wood	I. L. R. III. Cal.	485	450
Wooma Daee v. Gokoolanund Dass	I. L. R. III. Cal.	587	586, 619
Y.			
Yamunabai v. Narain Moreshvar...	I. L. R. I. Bom.	164	1276
Yeoni v. Bhagwan Sahai	I. L. R. I. All	541	246
Z.			
Zahur v. Nur Ali	I. L. R. II. All.	99	952
Zaib-ul-nissa v. Jairam Gir	I. L. R. I. All.	616	244
Zaib-ul-nissa Bibi v. Kulsum Bibi	I. L. R. I. All.	250	1458
Zain-ul-Abdin Khan v. Ahmad Raza Khan ...	I. L. R. II. All L. R. V. Ind. App.	67 233	239
Zalim Singh v. Rajah Parichat	L. R. IV. Ind. App.	139	634
Zamindar of Divaracota v. Vemuri Venkayya ...	I. L. R. I. Mad.	389	934
Zemindar of Carvatenagaram v. Madras Railway Company	L. R. I. Ind. App.	364	1452
Zemindar of Pittapuram v. The Proprietors of the Mutta of Kolanka	I. L. R. II. Mad. L. R. V. Ind. App.	28 206	1255
Zinulabdin Rowten v. Vijien Virapatren ...	I. L. R. I. Mad.	49	938
Zoolfun Bibee v. Radhica Prosonno Chunder ...	I. L. R. III. Cal.	560	1308

Digitized by Google

TABLE OF CASES REVERSED, OVERRULED, FOLLOWED, DISSENTED FROM, AND REMARKED UPON.

ABIDUNNISSA KHATOON *v.* AMIRUNNISSA KHATOON...**L. Rep. 4 I. A. 66; I. L. Rep. 2 Cal. 237.**

Followed in SOBHA BIBEE *v.* MIRZA SAKHAMUT ALI...**I. L. Rep. 3 Cal. 371; 1 Cal. Rep. 331.**

See **Act XXIII. of 1861, § 11. 1.**

ADOITO CHURN DEY *v.* PETER DASS...**13 Beng. L. Rep. 417; 17 W. Rep. 383.**

Followed in PROSUNNO COOMAREE DEBEA *v.* SHEIKH RUTTON BEPARY...**I. L. Rep. 3 Cal. 696; 1 Cal. Rep. 577.**

See **Landlord and Tenant. 2.**

THE AGRA SAVINGS BANK *v.* SRI RAM MITTER.. **I. L. Rep. 1 All. 388.**

The opinion of *Stuart*, C. J., in—differed from in PARTAB SINGH *v.* BENI RAM... **I. L. Rep. 2 All. 61.**

See **Landlord and Tenant. 6.**

AHMUD HOSSEIN KHAN *v.* MAHOMED AZEEM KHAN...**H. C. Rep. N. W. P., 1869, p. 51.**

Followed in ZAIB-UN-NISSA *v.* JAIRAM GIR.. **I. L. Rep. 1 All. 616.**

See **Civil Procedure Code Act VIII. of 1859, § 240. 2.**

AMRITALAL BOSE *v.* RAJONEEKANT MITTER ...**L. Rep. 2 I. A. 113; 15 Beng. L. Rep. 10; 23 W. Rep. 214.**

Followed in BAIJNATH *v.* MAHABIR... **I. L. Rep. 1 All. 608.**

See **Hindu Law—Inheritance—Daughter's Sons.**

ARUNACHELLU PILLAI *v.* APPAVU PILLAI .....**3 Mad. H. C. Rep. 188.**

Distinguished in KUNHI MOIDIN KUTTI *v.* RAMEN UNNI...**I. L. Rep. 1 Mad. 203.**

See **Adjustment of Decree.**

ANON..... **1 Bom. H. C. Rep. 138.**

Followed in EMPRESS *v.* NURUL HUQQ...**I. L. Rep. 3 Cal. 757; 2 Cal. Rep. 408.**

See **Recognizance.**

ANON.....**4 Mad. H. C. Rep. Appx. 53.**

Overruled by REG. *v.* PYLA ATCHI ... **I. L. Rep. 1 Mad. 278.**

See **Madras Regulation I. of 1805. 1.**

APPOVIER *v.* RAMA SUBHA AIYAN ...**11 Moo. I. A. 228.**

Approved in RUNJEET SINGH *v.* KOOER GUJRAJ SINGH ..... **L. Rep. 1 I. A. 9.**

See **Hindu Law—Partition. 9.**

And in JOY NARAIN GIRI *v.* GRISH CHUNDER MYTI.....**L. Rep. 5 I. A. 228; I. L. Rep. 4 Cal. 434.**

See **Hindu Law—Partition. 12.**

ASHRAF-UN-NISSA *v.* UMRAO BEGAM..**I. L. Rep. 1 All. 512.**

Followed in BHIKHAN KHAN *v.* RATAN KUAR.....**Ibid. p. 512.**

See **Act XVIII. of 1873, § 93. 2.**

AZIM-UL-LAH KHAN *v.* KISHEN LALL, S. A. 155 of 1877, 19th December 1877, unreported, not followed in HARSUKH *v.* MEGHRAJ... **I. L. Rep. 2 All. 345.**

See **Decree. 3.**

BADRI PRASAD *v.* MUHAMMAD YUSUF...**I. L. Rep. 1 All. 381.**

Followed in JEONI *v.* BHAGWAN SAHAI... **I. L. Rep. 1 All. 541.**

See **Civil Procedure Code, Act VIII. of 1859, § 246. 2.**

BAI LAKSHMI *v.* LAKHMIDAS...**1 Bom. H. C. Rep. 13.**

Disapproved of in SAVITRIBAI *v.* LAXMIBAI. **I. L. Rep. 2 Bom. 573.**

See **Hindu Law—Maintenance of Widow. 14.**

Digitized by Google

BIJNATH SHAHAI *v* DESPUTTY SINGH.....**I. L. Rep. 2 Cal. 208 ; 25 W. Rep. 489.**

"The ground of the decision in *Baijnath Shahai* v. *Desputty Singh* (*ubi supra*) was that the party there, a creditor of one of the next of kin, had no interest in the estate of the deceased. A purchaser from the next of kin is in a very different position from a creditor. If we thought that that decision went so far as to hold that a purchaser or an attaching creditor could not apply for revocation of a probate, we should, as at present advised, refer the point to be settled by a Full Bench ruling, because we should dissent from such a ruling." *Per Markby*, J., in KOMOLLOCHUN DUTT *v.* NILRUTTEN MUNDLE... **I. L. Rep. 4 Cal. 362, 365 ; 4 Cal. Rep. 175.**

BALDEO SAHAI *v.* BATESHAR SINGH...**I. L. Rep. 1 All. 75.**

Followed in JADU LAL *v.* RAM GHOLAM... **I. L. Rep. 1 All. 316.**

See **Res Judicata. 24.**

BATES *v.* MUNICIPAL COMMISSIONERS OF BELLARY.....**7 Mad. H. C. Rep. 249.**

Followed in LEMAN *v.* DAMODARAYA...**I. L. Rep. 1. Mad. 158.**

See **Madras Act III. of 1871. 2.**

BEMAL DOSS *v.* IKBAL NARAIN...**25 W. Rep. 249.**

Followed in UNNODA PERSAD ROY *v.* SHEIKH KOORPAN ALLY.....**I. L. Rep. 3 Cal. 518.**

See **Limitation. 83.**

BHIKAJI *v.* JAGANATH...**10 Bom. H. C. Rep. 351.**

Doubted by *N. Harridas*, J., in MORU *v.* GOPAL...**I. L. Rep. 2 Bom. 120, 127.**

See **Limitation. 2.**

BHYRUB CHUNDER SURMAH CHOWDHRY...**11 Beng. L. Rep. 423.**

Followed in ROY MEGHRAJ *v.* BEEJOY GOBIND BURRAL.....**I. L. Rep. 1 Cal. 197.**

See **Review. 2.**

BISESWAR LALL SAHOO *v.* RAMTUHUL SINGH... **11 Beng. L. Rep. 121.**

Reversed on appeal to the P. C...**L. Rep. 2 I. A. 131.**

BISSESSUR MULLICK *v.* MAHARAJA DHIRAJ MAHATAB CHUND.....**B. L. Rep. Sup. Vol. 967; S. C. 10 W. Rep. (F. B.) 8.**

Followed in MUNGOL PRASHAD DICHIT *v.* SHAMA KANTO LAHORY CHOWDHRY...**I. L. Rep. 4 Cal. 708.**

See **Limitation. 45.**

BORROWMAN *v.* DRAYTON...**L. Rep. 2 Ex. D. 15.**

Followed in FORBES *v.* TULLOCKCHAND MANOCKCHAND...**I. L. Rep. 3 Bom. 386.**

See **Contract. 1.**

BOWES *v.* FOSTER.....**27 L. J. N. S. 262.**

Followed in PARAM SINGH *v.* LALJI MAL... **I. L. Rep. 1 All. 403.**

See **Estoppel. 6.**

BULWUNT SINGH *v.* CHITTAN SINGH ..**H. C. Rep. N. W. P. 1871, p. 27.**

Followed in LACHMAN SINGH *v.* SANWAL SINGH.....**I. L. Rep. 1 All. 543.**

See **Civil Procedure Code, Act VIII. of 1859, § 7. 3.**

BUNSEE SINGH *v.* MIRZA NUZUF ALI BEG...**22 W. Rep. 328.**

Approved in DILDAR HOSSEIN *v.* MUJEEDUNNISSA.....**I. L. Rep. 4 Cal. 629.**

See **Civil Procedure Code Act VIII. of 1859, § 197.**

BURKUT HOSSEIN *v.* MAJIDOONISSA...**3 C. L. Rep. 208.**

Distinguished in ELAHI BUKSH *v.* MARACHOW.....**I. L. Rep. 4 Cal. 825; 3 Cal. Rep. 593.**

See **Appeal—Civil. 21.**

CALLY CHURN MULLICK *v.* BHUGGOBUTTY CHURN MULLIK...**10 Beng. L. Rep. 231.**

Approved of and followed in MOTHOORMOHUN ROY *v.* SOORENDRO NARAIN DEB... **I. L. Rep. 1 Cal. 108.**

See **Age of Majority. 1.**

CANAM *v.* KYLASH CHUNDER ROY CHOWDHRY... **25 W. Rep. 117.**

Approved and followed in RAI KOMUL DOSSEE *v.* LAIDLEY...**I. L. Rep. 4 Cal. 957.**

See **Right of Occupancy. 5.**

In the goods of CHALMERS...**6 Beng. L. Rep. Appx. 137.**

Followed in *In the goods of* GASPER...**I. L. Rep. 3 Cal. 733 ; 2 Cal. Rep. 436.**

See **Court Fees. 8.**

Digitized by Google

CHANDHRABHAGABAI *v.* KASINATH...2 Bom. H. C. Rep. 323.

Disapproved of in SAVITRIBAI *v.* LAXMIBAI. I. L. Rep. 2 Bom. 573.

See **Hindu Law—Maintenance of Widow. 14.**

CHINNA UMMIAYI *v.* TEGARAI CHETTI...I. L. Rep. 1 Mad. 168.

Distinguished in KAMALAM *v.* SADAGOPA CHETTI.....I. L. Rep. 1 Mad. 356.

See **Dancing Girl.**

CHINASWAMI IYANGAR *v.* GOPALACHARYA...7 Mad. H. C. Rep. 392.

Decision in—as to limitation, dissented from in ABDUL KARIM *v.* MANJI HANSRAJ...I. L. Rep. 1 Bom. 295.

See **Onus Probandi. 2.**

And in RAMCHANDRA *v.* SOMAR...I. L. Rep. 1 Bom. 305, 306.

See **Limitation. 1.**

CHOWDHRY WAHED ALI *v.* MUSST. JUMMAYE... 19 W. Rep. 87.

Followed in HURRODURGA CHOWDHRAI *v.* SHARRAT SOONDERY DABEEA...I. L. Rep. 4 Cal. 674; 3 Cal. Rep. 517.

See **Execution of Decree. 20.**

CHUNDO *v.* AHIM-UD-DIN....H. C. Rep. N. W. P. 1874, p. 28.

Dissented from in DWARKA DAS *v.* HUSAIN BAKSH.....I. L. Rep. 1 All. 564.

See **Pre-emption. 11.**

COLLECTOR OF MADURA *v.* MOOTTOO RAMALINGA SATHUPATHY ..... 12 Moo. I. A. 397.

Explained in RAJAH VELLANKI VENKATA KRISHNA ROW *v.* VENKATA RAMA LAKSHMI NARSAYYA...L. Rep. 4 I. A. 1; I. L. R. Mad. 174.

Under **Hindu Law—Adoption. 12.**

DAVLATA *v.* BERU...4 Bom. H. C. Rep. A. C. J. 197.

Doubted by *Westropp*, C. J., in MORU *v.* GOPAL....I. L. Rep. 2 Bom. 120.

See **Limitation. 3.**

DAYAL JAIRAZ *v.* KHATAV LADHA...12 Bom. H. C. Rep. 97.

Decision in—as to limitation, dissented from in ABDUL KARIM *v.* MANJI HANSRAJ...I. L. Rep. 1 Bom. 295.

See **Onus Probandi. 2.**

DEBI PARSAD *v.* THAKUR DIAL...I. L. Rep. 1 All. 105.

Followed in BHIMUL DOSS *v.* CHOONEE LALL...I. L. Rep. 2 Cal. 379.

See **Hindu Law—Inheritance—Nephew.**

DINDYAL LAL *v.* JAGDIP NARAIN SINCH...I. L. Rep. 3 Cal. 198.

Followed in VENKATTASAMI NAIK *v.* KUPPAIYAN.....I. L. Rep. Mad. 354.

And VENKATTARAMYYAN *v.* VENKATASUBRAMANIA DIKSHATAR.....Ibid. 358.

See **Sale in Execution of Decree. 10. 15.**

DINOBUNDHOO CHOWDHRY *v.* KRISTOMONEE DOSSEE.....I. L. Rep. 2 Cal. 152.

Followed in BHEEKA LALL *v.* BHUGGOO LALL...I. L. Rep. 3 Cal. 23.

See **Res Judicata. 18.**

DOOLBIN HUR NATH *v.* BAIJOO OOJHA...H. C. Rep. N. W. P. 1867, p. 50.

"That case is not well reported. There was a specialty in respect to the property sold being *jagir*, and, therefore, not subject to sale; and it was stated, though it does not appear from the report to have been proved, that the auction purchaser was aware of the property being *jagir*. If he was aware of the objection, he acted in bad faith, and I must dissent from the ruling. On the other hand, if he was not aware of the nature of the property and of its exemption from sale in execution, then he was simply deceived and misled by the decree-holder, and the judgment of the Court was correct. *Per Stuart*, C. J., in MAKUNDI LAL *v.* KAUNSILA...I. L. Rep. 1 All. 568, 574.

DOOMA SAHAO *v.* JODNARAIN LALL...12 W. Rep. 362.

Followed in BONOMALEE NAG *v.* KOYLASH CHUNDER DEY... I. L. Rep. 4 Cal. 692.

See **Estoppel. 4.**

DOORGA CHURN SURMA *v.* JAMPA DOSSEE...12 Beng. L. Rep. 289; 21 W. Rep. 46.

Followed in JADU DASS *v.* SUTHERLAND...I. L. R. Rep. 4 Cal. 556; 3 Cal. Rep. 223.

See **Co-sharers of Land. 3.**

Digitized by Google

DWARKA SINGH *v.* SOLANO.....**22 W. Rep. 38.**

Dissented from in NILMONEE SINGH DEO *v.* RAMBANDOO ROY...**I. L. Rep. 4 Cal. 757; 3 Cal. Rep. 211.**

See **Land Acquisition Act X. of 1870. 2.**

EIDAN *v.* MAZHAR HUSAIN...**I. L. Rep. 1 All. 483.**

Followed in TAUFIK-UN-NISSA *v.* GHULAM KAMBAR.....**I. L. Rep. 1 All. 506.**

See **Mahomedan Law—Dower. 3.**

EMPRESS *v.* SEYMOUR.....**I. L. Rep. 1 All. 630.**

Observed upon in EMPRESS *v.* MAHINDRA LAL.....**Ibid. 638.**

See **Illicit Sale of Liquor. 3.**

ENAYETOOLLAH *v.* SHAIKH MEAJAN...**16 W. Rep. 6.**

Followed in KHOOB LALL *v.* JUNGLE SINGH. **I. L. Rep. 3 Cal. 787; 2 Cal. Rep. 430.**

See **Appeal—Civil. 20.**

FORBES *v.* SHEIKH MEAN JAN...**3 W. Rep. 69.**

Not followed in ARFUNNESSA *v.* PEARY MOHUN MOOKERJEE ..... **I. L. Rep. 1 Cal. 378.**

See **Onus Probandi. 3.**

FRANKS *v.* NUNEH MAL...**H. C. Rep. N. W. P. 1875, p. 79.**

Dissented from in BEHARI LAL *v.* SALIK RAM ..... **I. L. Rep. 1 All. 675.**

See **Limitation. 79.**

GANES SINGH *v.* RAMGOPAL SINGH...**5 Beng. L. Rep. Appx. 55.**

Dissented from in PANCHCOWRIE MULL *v.* CHUMROOLALL ..... **I. L. Rep. 3 Cal. 563.**

See **Suit for Management of a Religious Endowment.**

GRISH CHUNDER GHOSE *v.* MUSSAMUT KALEE TARA.....**25 W. Rep. 395.**

Stated by *Birch*, J., in BHUGGEERUTH BERAH *v.* MONEERAM BANNERJEE...**I. L. Rep. 4 Cal. 855, 859.**

To have been overruled on appeal.

GANPATRAO *v.* VITHOBA...**4 Bom. H. C. Rep. A. C. J. 130.**

"The head-note to that case is incorrect. There is nothing in the very meagre report of the judgment of the Court, there pronounced by *Couch*, C. J., to the effect that Lingayets, as the parties there were, are Vaishyas." *Per Westropp*, C. J., in GOPAL NARHAR SAFRAY *v.* HANMANT GANESH SAFRAY...**I. L. Rep. 3 Bom. 273, 283.**

See **Hindu Law—Adoption. 6.**

GOBIND CHUNDER KOONDO *v.* TARUCK CHUNDER BOSE...**I. L. Rep. 3 Cal. 145; 1 Cal. Rep. 35.**

Followed in BEMOLASOONDURY CHOWDHRAIN *v.* PUNCHANUN CHOWDHRY...**I. L. Rep. 3 Cal. 705.**

See **Res Judicata. 22.**

GOLAM MAHOMED *v.* ASMUT ALI KHAN...**10 W. Rep. F. B. 14.**

Followed in GOGON MANJY *v.* KASHIWARY DEBY.....**I. L. Rep. 3 Cal. 498.**

See **Suit for Kabuliat. 1.**

GOPEENATH JANNAH *v.* JETEO MOLLAK...**18 W. R. 272.**

Dissented from in GOGON MANJI *v.* KASHIWARY DEBY..... **I. L. Rep. Cal. 3, 498.**

See **Suit for Kabuliat. 1.**

GOSSAIN DASS CHUNDER *v.* ISSUR CHUNDER NATH.....**I. L. Rep. 3 Cal. 225.**

Followed in GOLUCK CHUNDER MASANTA *v.* NUNDO COOMAR ROY...**I. L. Rep. 4 Cal. 699; 3 Cal. Rep. 450.**

See **Declaratory Decree. 6a.**

GUNEE LALL SINGH *v.* JOODHISTIR MAJRAH... **25 W. Rep. 141.**

Dissented from in BHAGWAN CHANDER DASS *v.* SUDDER ALLY.....**I. L. Rep. 4 Cal. 41; 2 Cal Rep. 357.**

See **Bengal Regulation VIII. of 1819, § 8 cl. 2. 2.**

GUJENDRO NARAIN ROY *v.* HEMANGINEE DASSEE. **13 W. Rep. 35.**

Distinguished in CHUTTERDHAREE LALL *v.* RAMBELASHEE KOER.....**I. L. Rep. 3 Cal. 318.**

See **Security Bond.**

GUNGAPERSADSAHEE *v.* MADHOPERSAUD SAHEE. **13 Beng. S. D. A. 1244.**

Followed in LALLAH RAMESSHUR DAYAL SINGH *v.* LALLAH BISSEN DAYAL...**I. L. Rep. 1 Cal. 406.**

See **Damages. 1.**

Digitized by Google

HAMEEDA BEEBEE *v.* NOOR BEEBEE.....9 W. Rep. 394.

Followed in POONA KOOER...I. L. Rep. 1. Cal. 101.

See **Review. 4.**

HARAN CHUNDER GHOSE *v.* DINOBUNDHOO BOSE. 14 Beng. L. R. 408; S. C. 23 W. Rep. 187.

Followed in DOSS MONEY DOSSEE *v.* JONMENJOY MULLICK...I. L. Rep. 3 Cal. 363; 1 Cal. Rep. 446.

See **Res Judicata. 21.**

HARIHAR MUKOPADHYA *v.* MADAB CHANDRA BABU...8 Beng. L. R. 566; 14 Moo. I. A. 152.

Followed in ARFUNNESSA *v.* PEARY MOHUN MOOKERJEE...I. L. Rep. 1 Cal. 378.

See **Onus Probandi. 3.**

HERBERT *v.* SAYERS.....52 B. 965.

Distinguished in SADODIN *v.* SPIERS...I. L. Rep. 3 Bom. 437.

See **Insolvency. 1.**

HIMMATSING *v.* GANPATSING...12 Bom. H. C. Rep. 94.

Doubted by *Pinhey*, J., in RAMCHANDRA S. VAGH *v.* SAKHARAM G. VAGH...I. L. Rep. 2 Bom. 346.

See **Hindu Law—Maintenance of Son. 1.**

HIRBAI *v.* GORBAI...12 Bom. H. C. Rep. 294.

"We consider that in *Hirbai* v. *Gorbai* (12 Bom. H. C. Rep. 294) we have gone quite as far as we can properly go in applying a less stringent rule with regard to the evidence required to prove a custom in the case of Khoja Mahomedans, than we should do in the case of Hindus or Mahomedans proper." *Per Westropp*, C.J., in RAHIMATBAI *v.* HIRBAI...I. L. Rep. 3 Bom. 34, 36.

See **Khojas.**

HURNATH CHATTERJEE *v.* FUTTICK CHUNDER SUMMADAR.....18 W. Rep. 512.

Followed in BHYRUB CHUNDER *v.* GOLAB COOMARY.....I. L. Rep. 3 Cal. 517.

See **Appeal—Civil. 7.**

HURRI SUNKUR MOOKERJEE *v.* MUKTARAM PATRO...15 Beng. L. Rep. 238; S. C. 24 W. Rep. 154.

Followed in GOBIND CHUNDER KOONDO *v.* TARUCK CHUNDER BOSE...I. L. Rep. 3 Cal. 145; 1 Cal. Rep. 35.

See **Res Judicata. 19.**

HURRO LALL DASS *v.* SOOJAWUT ALI...8 W. Rep. 197.

Observed upon in SOBHA BIBEE *v.* MIRZA SACHAMUT ALI.....I. L. Rep. 3 Cal. 371; 1 Cal. Rep. 331.

See **Act XXIII. of 1861, § 11. 1.**

HURO SOONDUREE DEBIA v. PUNCHOO RAM MUNDUL.....24 W. Rep. 225.

Followed in BHYRUB CHUNDER *v.* GOLAP COOMARY .....I. L. Rep. 3 Cal. 517.

See **Appeal—Civil. 7.**

IMPERATRIX *v.* PADMANABHA PAI...I. L. Rep. 2 Bom. 384.

Followed in *In the Matter of the Petition of* GUR DAYAL ...I. L. Rep. 2 All. 205

See **Sanction to Prosecute. 6.**

In re BHYRUB BHARUTTEE MOHUNT ..... 21 W. Rep. 340.

Distinguished in DUKHARAM BHARTI *v.* LACHMAN BHARTI ..... I. L. Rep. 4 Cal. 954; 4 Cal. Rep. 49.

See **Certificate to collect Debts. 4.**

JAMESON & Co. *v.* THE BRICK AND STONE COMPANY.....L. Rep. 4 Q. B. D. 208.

Distinguished in SADODIN *v.* SPIERS...I. L. Rep. 3 Bom. 437.

See **Insolvency. 1.**

JIJAYIANSHA BAYI SAIBA *v.* KAMAKOHI BAY SAIBA.....3 Mad. H. C. Rep. 424.

Affirmed SRI GAJAPATHI NILAMANI PATHA MAHA DEVI GURU *v.* SRI GAJAPATHI RADHAMANI PATHA MAHA DEVI GURU. L. Rep 4 I. A. 212; I. L. R. 1 Mad. 290; 1 Cal. Rep. 97.

See **Hindu Law—Inheritance—Widow. 2.**

JINA RANCHOD *v.* JODHA GHELA...1 Bom. H. C. Rep. 1.

Observed upon in KARIM BAKSH *v.* BUDHA. I. L. Rep. 1 All. 249.

See **Right to Sue. 3.**

JOHURRA BIBEE *v.* SREE GOPAL MISSER...I. L. Rep. 1 Cal. 470.

Digitized by Google

Followed in JOYKISTO COWAR *v.* NITTYANUND NUNDY .....**I. L. Rep. 3 Cal. 738 ; 2 Cal. Rep. 440.**

See **Hindu Law—Ancestral Trade.**

JOOLRAJ SINGH *v.* GOUR BUKSH...**7 W. Rep. 110.**

Dissented from in ANANDRAV BAPUJI *v.* SHEIKH BABA.....**I. L. Rep. 2 Bom. 562.**

See **Re-sale in Execution of Decree.**

JUDAL *v.* HIRA...**4 Bom. H. C. Rep. A. C. J. 75.**

As to the jurisdiction of Small Cause Court, not followed, in SIDLINGAPA *v.* SIDAVA... **I. L. Rep. 2 Bom. 634.**

See **Small Cause Court, Mofussil. 2.**

And APAJI v. GANGABAI.....**Ibid. 632.**

See **Hindu Law—Maintenance of Widow. 15.**

JUDOONATH SHAHA...**23 W. Rep Cr. Rule 33.**

Overruled by EMPRESS *v.* BAIDANATH DAS...**I. L. Rep. 3 Cal. 366 ; 1 Cal. Rep. 442.**

See **Criminal Procedure Code, Act X. of 1872, § 222.**

JUGBUNDO RUN SINGH *v.* RADASHAM NARENDRO MAHAPATTUR.....**Beng. S. D. A. 1859, pp. 1556, 1560.**

Not followed in JANOKEE DEBEA *v.* GOPAUL ACHARJIA.....**I. L. Rep. 2 Cal. 365.**

See **Hindu Law—Adoption. 2.**

KALLY PROSONNO HAZRA *v.* HEERA LAL MUNDLE...**I. L. Rep. 2 Cal. 468.**

Followed in MUNGOL PRASHAD DICHIT *v.* SHAMA KANTO LAHORY CHOWDRY...**I. L. Rep. 4 Cal. 708.**

See **Limitation. 44.**

KANTHY RAM *v.* BANKEY LAL, unreported, followed in GOPAL SINGH *v.* DULAR KUAR... **I. L. Rep. 2 All. 352.**

See **Appeal—Civil. 22.**

KHATHAMA NANCHIAR *v.* DORASINGA TEVER... **L. Rep. 2 I. A. 169 ; 15 Beng. L. Rep. 83.**

Followed in SINI THIRUVENGADATHIENGAR *v.* SANGILIVEERAPPA P. CHINNATHUMBIAR...**I. L. Rep. 1 Mad. 65.**

See **Declaratory Decree. 4.**

KELLY *v.* GOBIND DAS...**H. C. Rep. N. W. P. 1874, p. 168.**

Distinguished in MAKUNDI LAL *v.* KAUNSILA...**I. L. Rep. 1 All. 568.**

See **Sale in Execution of Decree. 13.**

KHETTER MOHUN CHOWRUNGHEE...**22 W. Rep. Cr. Rule 43.**

Overruled by EMPRESS *v.* BIDANATH DAS... **I. L. Rep. 3 Cal. 366 ; 1 Cal. Rep. 442.**

See **Criminal Procedure Code, Act X. of 1872, § 222.**

KIRPAR *v.* BHAGAWAN DASS...**1 Beng. L. Rep. F. B. 61.**

"All their Lordships desire to say of it is that, as reported, it does not appear consistent with their judgment in the former appeal to which they have referred (*i. e.*), *Soorjomonee Dayee v. Suddanand Mohapaiter*, 12 Beng. L. Rep. 304), nor with their opinion in the present case." KRISHNA BEHARI RAY *v.* BROJESWARI CHOWDRANEE ...**I. L. Rep. 1. Cal. 144 ; L. Rep. 2 I. A. 283.**

Note.—In the report in the Law Reports, 2 I. A., the name of this case is incorrectly given in their Lordships' judgment as SHEIKH RAHIMTULLA *v.* SHEIKH SARINTULLA KAGCHI.

KISTONATH BHAGBUTTY *v.* JUMBOONATH BHAGBUTTY ..... **21 W. Rep. 145.**

Not followed in RAJ KOOMAR SINGH *v.* SAHIBZADA ROY...**I. L. Rep. 3 Cal. 20.**

See **Right to Sue. 5.**

KYLASH CHUNDER SIRCAR *v.* GOOROO CHURN SIRCAR.....**3 W. Rep. 43.**

Overruled by RAJKISHORE LAHOORY *v.* GOBIND CHANDER LAHOORY.....**I. L. Rep. 1 Cal. 27 ; 24 W. R. 234 ; L. R. 4 I. A. 153 N.**

See **Hindu Law—Inheritance—Brother. 1.**

LALLUBHAI BAPUBHAI *v.* MANKUVARBAI...**I. L. Rep. 2 Bom. 388.**

Distinguished in GREENDER CHUNDER GHOSE *v.* MACKINTOSH.....**I. L. Rep. 4 Cal. 897.**

See **Limitation. 38a.**

LUCHMEE BUKSH ROY *v.* RUNJEET ROY PANDAY. **13 Beng. L. Rep. 177.**

Followed in RAHMANI BIBI *v.* HULASA KUAR.....**I. L. Rep. 1 All. 642.**

See **Acknowledgment of Mortgagor's Title. 3.**

Digitized by Google

MANGALA DEBI *v.* DINNANATH BOSE...**4 Beng. L. Rep. O. C. J. 72; 12 W. Rep. Civ. Rul. 35.**

Followed in GAURI *v.* CHANDRAMANI...**I. L. Rep. 1 All. 262.**

See **Hindu Law—Widow's Right of Residence in Family House.**

MÁSHOOK AMEEN SUZZADA *v.* MERUM REDDY... **8 Mad. H. C. Rep. 31.**

Dissented from by *Innes*, J., in KESHAVA *v.* KESHAVA.....**I. L. Rep. 2 Mad. 45.**

See **Kanam Mortgage.**

MAYOR OF LYONS *v.* THE E. I Co....**1 Moo. I. A. 175; S. C. I Moo. P. C. 175.**

As to the observations of Lord Brougham—"Can the decree as to the application of the fund stand? Shall the fund be applied to the establishment and support of a College at Lucknow? Shall it sink into the residue and be divided between the two charities appointed to be established at Calcutta and Lyons?—for the case of *Attorney-General* v. *Bishop of Llandaff* (cited 2 My. & K. 586) and *Attorney-General* v. *Ironmongers' Co.* (Cr. & P. 208, 2 My. & K. 576, 10 Cl. & F. 908) make it clear that in this case, which is indeed stronger than either of those, the other two charities must take, if the gift fail as regards the third,"—the Privy Council say in MAYOR OF LYONS *v.* ADVOCATE-GENERAL OF BENGAL...**L. Rep. 3 I. A. 32, p. 58; I. L. R. 1 Cal. 303; L. R. I. App. Ca. 91.**

"It is obvious that the question of the ultimate disposition of the fund was not ripe for decision, the point then under consideration being the direction proper to be given for carrying into effect, if possible, the Lucknow charity; and, indeed, the decree advised by this Committee, giving directions for that object, was expressly made 'without prejudice to any question as to the final application of the same fund under the direction hereinafter contained, or otherwise.' The observations in the judgment, therefore, can only be regarded as an opinion, and not as a judgment. So regarded, however, they would have been entitled to great weight, if their authority had remained unimpeached. But the subsequent decision in the case of *Attorney-General* v. *Ironmongers' Co.* in the House of Lords, in which Lord Brougham concurred, corrected the views his Lordship had expressed in an earlier stage of that case (2 My. & K. 586), and in the observations referred to. That decision was in effect that among charities there was nothing analogous to benefit of survivorship."

See **Will. 11.**

MHALSABAI *v.* VITHOBA KHANDAPPA GULVE... **7 Bom. H. C. Rep. Appx. 26.**

"The third clause in the head-note to *Mhalsabai* v. *Vithoba Khandappa Gulve* (*ubi supra*) is wrong. The Court did not give any opinion in that case on the law relating to Vaishyas, or that the Lingayats were Vaishyas." *Per Westropp*, C.J., in GOPAL NARHAR SAFRAY *v.* HANMANT GANESH SAFRAY.....**I. L. Rep. 3 Bom. 273, 283.**

See **Hindu Law—Adoption. 6.**

MOHESHUR LALL *v.* CHRISTIAN...**6 W. Rep. 250.**

Followed in LALLA NOWBAT LALL *v.* LALLA JEWAN LALL...**I. L. Rep. 4 Cal. 831; 2 Cal. Rep. 319.**

See **Mahomedan Law—Pre-emption. 1.**

MOHUMMUD ZAHOOR ALI KHAN *v.* THAKOORANEE RUTTA KOER...**11 Moo. I. A. 468.**

Followed in RAM TARRUN KOONDOO *v.* HOSSEIN BUKSH...**I. L. Rep. 3 Cal. 785; 2 Cal. Rep. 385.**

See **Civil Procedure Code, Act VIII. of 1859, § 7. 5.**

MOMTAZOODDEEN MAHOMED *v.* RAJCOOMAR DASS...**14 Beng. L. Rep. 408; 23 W. Rep. 187.**

Dissented from in KHUB CHAND *v* KALLIAN DASS.....**I. L. Rep. 1 All. 240.**

See **Sale in Execution of Decree. 4.**

MORGAN *v.* POWELL..... **3 Q. B. 278.**

Approved in BURMAH TRADING CORPORATION, LIMITED, *v.* MIRZA MAHOMED ALLY SHERAZEE...**L. Rep. 5 I. A. 130.**

See **Damages. 4.**

MUFTI JALALUDIN MAHOMED *v.* SHOHORULLA... **15 Beng. L. Rep. Ap. 1; S. C. 22; W. Rep. 422.**

Dissented from in GULZARI MAL *v.* JADAUN RAI.....**I. L. Rep. 2 All. 63.**

See **Court Fees. 1.**

MULUK FUQUEER BAKSH *v.* MANOHAR DAS...**H. C. Rep. N. W. P. 1870, p. 29.**

Followed in HARSUKH *v.* MEGHRAJ...**I. L. Rep. 2 All. 345.**

See **Decree. 3.**

Digitized by Google

MUSSUMAT BIJEE KOER *v.* RAI DAMODAR DASS... **H. C. Rep. N. W. P. 1873, p. 55.**

Dissented from in CROSTHWAITE *v.* HAMILTON.....**I. L. Rep. 1 All. 87.**

See **Principal and Surety. 1.**

MUSST. FUZULUN *v.* SYUD KERAMUT HOSSEIN... **21 W. Rep. 242.**

Approved in DILDAR HOSSEIN *v.* MUJEEDUNNISSA.....**I. L. Rep. 4 Cal. 629.**

See **Civil Procedure Code, Act VIII. of 1859, § 197.**

MUSSAMAT SUBJAN BIBI *v.* SHEIKH SURIATULLA .....**3 Beng. L. Rep. 413.**

"In so much of that decision as awarded damages for the detention of the illegally seized cattle, all of which, with the exception of the three bullocks which died while *in custodia legis*, were restored to the rightful owners, we, as already observed in *Vana* v. *Hata* (11 Bom. H. C. Rep. 46—58), fully concur; but, now that our attention has been specially directed to the refusal of the High Court of Calcutta to award also to the plaintiff in that case, the value of the three bullocks which died, we feel compelled to say that we respectfully differ from that portion of the decision." GOMA MAHAD PATIL *v.* GOKALDAS KHIMJI. *Westropp*, C. J., and *Kemball*, J. **I. L. Rep. 3 Bom. 74—81, 1878.**

MUSSUMUT WAHIDUNNISSA *v.* MUSSUMUT SHAHRATTUN ..... **6 Beng. L. Rep. 54.**

Followed in SYUD BAZAYET HOSSEIN *v.* DAOLI CHAND... **L. Rep. 5 I. A. 211; I. L. Rep. 4 Cal. 402.**

See **Mahomedan Law—Right of Creditors to Follow Estate of Debtor into hands of Purchaser from Heir.**

NANA LAKSHMAN *v.* ANANT BABAJI...**I. L. Rep. 2 Bom. 353.**

Differred from in RAJPATI SINGH *v.* RAM SUKHI KUAR ...**I. L. Rep. 2 All. 40.**

See **Registration. 40.**

NEELKUNTH SAHEE *v.* ASMUN MATHO...**H. C. Rep. N. W. P. 1871, p. 67.**

Dissented from by *Stuart*, C.J., in MAKUNDI LAL *v.* KAUNSILA...**I. L. Rep. 1 All. 568, 574.**

NIDHAMAT GHOSAL.. **19 W. Rep. Cr. Rul. 1.**

Followed in EMPRESS *v.* NURUL HUQQ...**I. L. Rep. 3 Cal. 757.**

See **Recognizance.**

NIDMARTI NAGABHUSHANAM...**7 Mad. H. C. Rep. 119.**

Approved in EMPRESS *v.* KETABDI MUNDUL. **I. L. Rep. 4 Cal. 764.**

See **Culpable Homicide.**

NIRUNJUN BARTHEE *v.* PADARATH BARTHEE... **S. D. A. N. W. P. 1864, Vol. 1, p. 512.**

Followed in MADHO DAS *v.* KAMTA DAS... **I. L. Rep. 1 All. 539.**

See **Hindu Law—Inheritance—Saniasis.**

NOBOLAL KHAN *v.* ADHERANEE NARAIN KOONWAREE .....**5 W. Rep. 191.**

Not followed in ARFUNNESSA *v.* PEARY MOHUN MOOKERJEE .....**I. L. Rep. 1 Cal. 378.**

See **Onus Probandi. 3.**

OBHOYCHURN DUTT *v.* MUDSOODAN CHOWDHRY. **5 Wym. 172.**

Not followed in POORNO CHUNDER COONDOO *v.* PROSONNO COOMAR SIKDAR...**I. L. Rep. 2 Cal. 123.**

See **Limitation. 67.**

ODOIT ROY *v.* RADHA PANDAY...**7 W. Rep. 72.**

Followed in LALLA RAMESSHUR DAYAL SINGH *v.* LALLA BISSEN DAYAL...**I. L. Rep. 1 Cal. 406.**

See **Damages. 1.**

PATTABHIRAMIER *v.* VENCATROW NAIKEN AND OTHERS.....**13 Moo. I. A. 560.**

Approved and explained in THUMBASAWMY MUDELLY *v.* MAHOMED HOSSAIN ROWTHEN .....**L. Rep. 2 I. A. 241; I. L. R. 1 Mad. 1.**

See **Mortgage. 12.**

PEAREE MOHUN PODDAR *v.* JUGOBUNDHOO SEN. **24 W. Rep. 418.**

Dissented from as being opposed to the decision of the Privy Council in GUNGA GOBIND MUNDUL *v.* BHOOPAL CHUNDER BISWAS .....**19 W. Rep. 101.**

In UMBICHA CHURN GOOPTA *v.* MADHUB GHOSAL.....**I. L. Rep. 4 Cal. 870; 4 Cal. Rep. 55.**

See **Limitation. 22.**

PEDDAMUTHULAY *v.* N. TIMMA REDDY...**2 Mad. H. C. Rep. 270.**

Observed upon in UDA BEGAM *v.* IMAM-UD-DIN.....**I. L. Rep. 1 All. 82.**

See **Acquiescence.**

Digitized by Google

PETUM DOSS *v.* RAMDHONE DOSS...**Tay. 279.**

Followed in JOYKISTO COWAR *v.* NITTYANUND NUNDY...**I. L. Rep. 3 Cal. 738; 2 Cal. Rep. 440.**

See **Hindu Law — Ancestral Trade.**

POORNO SINGH *v.* HURRYCHUND SURMAH.....**10 Beng. L. Rep. 117.**

Followed in DWARKA DAS *v.* HUSAIN BAKSH .....**I. L. Rep. 1 All. 564.**

See **Pre-emption. 11.**

PROTAB CHUNDER BOROOAH *v.* RANEE SURNO MOYEE.....**14 W. Rep. 151.**

Followed in HURRODURGA CHOWDHRAIN *v.* SHARRET SOONDARY DABEEA...**I. L. Rep. 4 Cal. 674.**

See **Execution of Decree. 20.**

RADHA KRISTO DUTT *v.* GUNGA NARAIN CHATTERJEE.....**23 W. Rep. 328.**

Followed in BHYRUB CHUNDER *v.* GOLAP COOMARY.....**I. L. Rep. 3 Cal. 517.**

See **Appeal—Civil. 7.**

RAHI *v.* GOVIND TEJA...**I. L. Rep. 1 Bom. 97.**

Followed in VIRARAMUTHI UDAYAN *v.* SINGARAVELU...**I. L. Rep. 1 Mad. 306.**

See **Hindu Law—Inheritance—Illegitimate Son. 6.**

RAJ MOHUN NEOGEE *v.* ANUND CHUNDER CHOWDHRY.....**10 W. Rep. 166.**

"We think that decision is not in accordance with the principles laid down in the Full Bench decision in *Dayamonee Chowdrainee* v. *Bholanath Ghose*, B. L. R. Sup. Vol. 592; S. C., 6 W. R., Act X. Rul., 77." *Per Cur.* in KHAJAH ASHANOOLLAH *v.* KAJEE AFTABOODDEEN...**I. L. Rep. 4 Cal. 594; 3 Cal. Rep. 382.**

Under **Interest. 8.**

RAJAGOPALA AYYANGAR *v.* COLLECTOR OF CHINGLEPUT...**7 Mad. H. C. Rep. 98.**

Distinguished in FAKIR MUHAMMAD *v.* TIRUMALA CHARIAR.....**I. L. Rep. 1 Mad. 205.**

See **Rights of Mirasdars.**

RAJAH RAM *v.* BAINEE MADHO...**H. C. Rep. N. W. P. 1873, p. 81.**

Dissented from in KHUB CHAND *v.* KALIAN DAS.....**I. L. Rep. 1 All. 240.**

See **Sale in Execution of Decree. 4.**

RAJKISHORE LAHOORY *v.* GOBIND CHUNDER LAHOORY...**I. L. Rep. 1 Cal. 27; 24 W. Rep. 234; L. Rep. 4 I. A. 153, n.**

Approved in SHEO SOONDARY *v.* PIRTHEE SINGH .....**L. Rep. 4 I. A. 147.**

See **Hindu Law—Inheritance—Brother. 2.**

RAJKUMAR RAM GOPAL NARAIN SINGH *v.* RAM DUTT CHOWDHRY...**5 Beng. L. Rep. 264.**

Distinguished in GUNNOO SINGH *v.* LATAFUT HOSSAIN...**I. L. Rep. 3 Cal. 336; 1 Cal. Rep. 91.**

See **Mortgage. 23.**

RAMU NAIKAN *v.* SUBBARYA MUDALI...**7 Mad. H. C. Rep. 229.**

Dissented from in KHUB CHAND *v.* KALLIAN DAS.....**I. L. Rep. 1 All. 240.**

See **Sale in Execution of Decree. 4.**

RAMA RAU *v.* RAJA RAU...**2 Mad. H. C. Rep. 114.**

Remarked upon in UDA BEGAM *v.* IMAM-UD-DIN.....**I. L. Rep. 1 All. 82.**

See **Acquiescence.**

RAMA RAO *v.* SURIA RAO...**I. L. Rep. 1 Mad. 84.**

Reversed on appeal, *sub nom.* ZAMINDAR OF PITTAPURAM *v.* PROPRIETORS OF THE MUTTA OF KOLANAKU...**L. Rep. 5 I. A. 206; I. L. Rep. 2 Mad. 23; 3 Cal. Rep. 265.**

See **Res Judicata. 5.**

RAMALINGA PILLAI *v.* SADASIVA PILLAI...**9 Moo. I. A. 506.**

"The statement in the marginal note to *Ramalinga Pillai* v. *Sadasiva Pillai* (9 Moo. I. A. 506,) and at page 511 of the report, that the person held in that case to have been adopted belonged to the Vaishya class, is erroneous. Mr. Mayne in his able treatise on Hindu Law (p. 110, note *u*) states that the parties were really Sudras, which fact is also mentioned in the judgment of the High Court of Madras in *Jivani Bhai* v. *Jivu Bhai* (2 Mad. H. C. Rep. 462, 467). In *Ramalinga Pillai* v. *Sadasiva Pillai* (*ubi supra*) the judgment of the Privy Council went solely on the admission of the appellant's father as to the fact and validity of the adoption, and which admission, so far as the validity of the adoption was concerned, rested, no doubt,

Digitized by Google

on his knowledge that the adopter and adoptee, being Sudras, fell within the exception to the general rule against adoption of a sister's son. It should be observed that Lord Chelmsford, in giving the judgment of the Privy Council, said that upon the objection that the adoption was illegal, as the respondent was the adopter's sister's son, 'very little was said;' and he did not discuss that point. That case, therefore, is no authority for the proposition that amongst Vaishyas a sister's son may be adopted." *Per Westropp*, C.J., in GOPAL NARHAR SAFRAY *v.* HANMANT GANESH SAFRAY.....**I. L. Rep. 3 Bom. 273, 282.**

RAMANAND *v.* THE BANK OF BENGAL...**I. L. Rep. 1 All. 377.**

Overruled by WILAYAT-UN-NISSA *v.* NAJIB UN-NISSA.....**I. L. Rep. 1 All. 583.**

See **Appeal—Civil. 12.**

RAMCHANDRA *v.* SARASWATIBAI...**4 Bom. H. C. Rep. A. C. J. 73.**

As to jurisdiction of Small Cause Court not followed in SIDLINGAPA *v.* SIDAVA. **I. L. Rep. 2 Bom. 624.**

And APAJI *v.* GANGABAI .....**Ibid. 632.**

See **Hindu Law—Maintenance of Widow. 15.**

RAM KISHEN DOSS *v.* HURKHOO SINGH ROY...**7 W. Rep. 329.**

Distinguished in CHUTTERDHAREE LALL *v.* RAMBELASHEE KOER...**I. L. Rep. 3 Cal. 318.**

See **Security Bond.**

RAMKRISHNA *v.* BAYAJI...**5 Bom. H. C. Rep. A. C. J. 35.**

Overruled by GUMNA *v.* BHIKU.....**I. L. Rep. Bom. 125.**

See **Limitation. 30.**

RAMLAL THAKURSIDAS *v.* LAKHMICHAND.....**1 Bom. H. C. Rep. Appx. 51.**

Followed in JOHURRA BIBEE *v.* SREEGOPAL MISSER.....**I. L. Rep. 1 Cal. 470.**

See **Hindu Law—Maintenance of Widow. 9.**

RAMLAL THAKURSIDAS *v.* LAKHMICHAND MUNIRAM...**1 Bom. H. C. Rep. Appx. 71.**

Followed in JOYKISTO COWAR *v.* NITTYANUND NUNDY...**I. L. Rep. 3 Cal. 738.**

See **Hindu Law — Ancestral Trade.**

RAM LOCHUN CHUCKERBUTTY *v.* RAM SOONDER CHUCKERBUTTY.....**20 W. Rep. 104.**

Followed in SHIRO KUMARI DEBI *v.* GOVIND SHAW TANTI...**I. L. Rep. 2 Cal. 418.**

See **Declaratory Decree. 6.**

RATAN TRIMBACK PATIL *v.* N. HORMUSJI... **Misc. S. A. 2 of 1869.**

Not followed in SHIVLAL KHUBCHAND *v.* APAJI BHIVRAV...**I. L. Rep. 2 Bom. 654.**

See **Civil Procedure Code, Act VIII. of 1859, § 338.**

RATANCHAND SHRICHAND *v.* HANMANTRAV SADASIV.....**6 Bom. H. C. Rep. A. C. J. 166.**

Approved in RUNJIT SINGH *v.* MEHERBAN KOER...**I. L. Rep. 3 Cal. 662, 674; 2 Cal. Rep. 391.**

See **Appeal—Civil. 9.**

RATANCHAND SHRICHAND *v.* HANMANTRAV SHIVBAKAS...**6 Bom. H. C. Rep. A. C. J. 166.**

"For myself I cannot regard it as an authority binding on me, and I consider myself free to form my opinion on the case before me in my own Court irrespective of it." *Per Stuart*, C. J., in UDA BEGAM *v.* IMAM-UD-DIN...**I. L. Rep. 2 All. 74-83.**

REASUT HUSSEIN *v* HADJEE ABDOOLLAH...**I. L. Rep. 2 Cal. 131.**

"The opinion of the Privy Council no doubt places a very wide interpretation on the words ("other good and sufficient reason in § 376 of Act VIII. of 1859"), but the opinion on this point was not necessary for the decision of the case, and may without impropriety be regarded rather as a mere *obiter dictum* than as a binding authority." *Per Innes*, J., in RAMAN *v.* KARUNATHA THARAKAR...**I. L. Rep. 2 Mad. 10-12.**

REG. *v.* BAI RATAN...**10 Bom. H. C. Rep. 166.**

Followed in EMPRESS *v.* MANNOO TAMOOLEE...**I. L. Rep. 4 Cal. 696; 4 Cal. Rep. 137.**

See **Confession. 4.**

REG. *v.* GOBIND TEWARI...**I. L. Rep. 1 Cal. 281.**

Followed in EMPRESS *v.* MANYU...**I. L. Rep. 2 All. 340.**

See **Appeal—Criminal. 7.**

Digitized by Google

REG. *v.* JAGATMAL .....I. L. Rep. 1 All. 162.
Dissented from in REG. *v.* GAJI...I. L. Rep. 1 Bom. 311.
See **False Evidence.**

REG. *v.* JAGAT MAL.....I. L. Rep. 1 All. 162.
Overruled by EMPRESS *v.* KASHMIRI LAL... I. L. Rep. 1 All. 625.
See **Criminal Procedure Code, Act X. of 1872, § 473. 2.**

REG. *v.* JETHA BALA...10 Bom. H. C. Rep. 68.
Dissented from in REG. *v.* RAHIMAT...I. L. Rep. 1 Bom. 147.
See **Compounding Offences. 6.**

REG. *v.* KALYA BIN FAKIR...5 Bom. H. C. Rep. Cr. Ca. 34.
Followed in *In the matter of* BHOOBUNESHWER DUTT...I. L. Rep. 3 Cal. 621; 2 Cal. Rep. 80.
See **Penal Code, § 173.**

REG. *v.* KULTARAM SINGH...I. L. Rep. 1 All. 129.
Dissented from in REG. *v.* GAJI...I. L. Rep. 1 Bom. 311.
And REG. *v.* PARSAPA.....Ibid. 339.
See **False Evidence.**

REG. *v.* KULTARAM SINGH...I. L Rep. 1 All. 129.
Overruled by EMPRESS *v.* KASHMIRI LAL... I. L. Rep. 1 All. 625.
See **Criminal Procedure Code, Act X. of 1872, § 473. 2.**

REG. *v.* MEARES.....14 Beng. L. Rep. 106.
Ratio decidendi in—dissented from in FEDA HOSSEIN...I. L. Rep. 1. Cal. 431.
See **Act VI. of 1874 § 5. 1.**

REG. *v.* SHIVYA.....I. L. Rep. 1 Bom. 219.
Dissented from in EMPRESS *v.* RAMAJIYYA... I. L. Rep. 2 Mad. 5.

REG. *v.* SUBBANA GAUNDAN...1 Mad. H. C. Rep. 30.
Followed in EMPRESS *v.* ABUL HASAN ... I. L. Rep. 1 All. 497.
See **Penal Code, § 211. 1.**

REG. *v.* SUBBANA GAUNDAN...1 Mad. H. C. Rep. 30.
Followed in EMPRESS *v.* SALIK...I. L. Rep. 1 All. 527.
See **Penal Code, § 211. 2.**

ROSHUN MAHOMED *v* MAHOMET KULEEN...7 W. Rep. 150.
Distinguished in LALLA NOWBUT LALL *v.* LALLA JEWAN LALL...I. L. Rep. 4 Cal. 831; 2 Cal. Rep. 319.
See **Mahomedan Law—Pre-emption. 1.**

ROYAL BRITISH BANK *v.* TURQUAND...5 Ell. & Bl. 248; 6 Ibid. 327.
Distinguished in IRVINE *v.* UNION BANK OF AUSTRALLA.....L. Rep. 4 I. A. 86; I. L. R. 3 Cal. 280.
Under **Power of Director to borrow and mortgage.**

SAH MAKHAN LALL PANDAY *v.* SAH KOONDUN LALL.....L. Rep. 2 I. A. 210.
Approved in MAHOMED EWAZ *v.* BIRJ LALL. L. Rep. 4 I. A. 166.
Under **Registration. 23.**

SALU *v.* RAJSANGJI...2 Bom. H. C. Rep. 162.
Doubted by *Westropp*, C. J., in MORU *v.* GOPAL. .....I. L. Rep. 2 Bom. 120.
See **Appeal—Civil. 31.**

SAMUEL *v.* SAMUEL.....9 Jur. 222.
"I own that I don't quite understand the decision, or the ground on which it proceeded. The report, however, of the judgment is extremely brief, consisting only of a few lines, and the decision is not easy to reconcile with others that have preceded and followed it." *Per White*, J., in *In the matter of the Will of* C. M. HUNTER ... I. L. Rep. 4 Cal. 420, 1878.

SANGAPPA CHAMBASAPPA *v.* SAHEBANNA KENGEDAPPA...7 Bom. H. C. Rep. A. C. J. 141.
"That case would not be in accordance with our view of the law." *Markby*, J, in AHAMUDEEN *v.* GRISH CHUNDER SHAHMUT...I. L. Rep. 4 Cal. 350, 354.

SEETARAM *v.* DHUMOOK DHAREE SAHYE.....1 Hay, 260.
Followed in JANOKEE DEBEA *v.* GOPAUL ACHARJEA.....I. L. Rep. 2 Cal. 365.
See **Hindu Law—Adoption. 2.**

SHAM KANT BANNERJEE *v.* BABOO GOPALLAL TAGORE.....1 W. Rep. Civ. Rul. 338.
Disapproved of in SHETH KAHANDAS NARANDAS *v.* DHAIABHAL....I. L. Rep. 3 Bom. 182.

Digitized by Google

SHAMLAL GHOSE *v.* SEKUNDER KHAN.....**3 W. Rep. 182.**

Not followed in ARFUNNESSA *v.* PEARY MOHUN MOOKERJEE.....**1. L. Rep. 1 Cal. 378.**

See **Onus Probandi. 3.**

SHAMA PURSHAD ROY CHOWDHRY *v.* HURRO PURSHAD ROY CHOWDHRY...**10 Moo. I. A. 203; S. C. 3 W. Rep. P. C. 11.**

Followed by *Ainslie*, *Macpherson*, and *Markby*, JJ., and distinguished by *Garth*, C. J., and *Jackson*, J., in JOGESH CHUNDER DUTT *v.* KALLI CHURN DUTT.....**I. L. Rep. 3 Cal. 30.**

See **Money paid under Decree subsequently superseded.**

SHEO PERSHAD LALL *v.* THAKOOR RAI...**H. C. Rep. N. W. P. 1868, p. 254.**

Followed in SHAIKH EWAZ *v.* MOKUNA BIBI.....**I. L. Rep. 1 All. 132.**

See **Pre-emption. 8.**

SHEO SINGH RAI *v.* MUSSUMUT DAKHO ...**L Rep. 5 I. A. 87.**

Approved in CHOTAY LALL *v.* CHUNNO LALL. **L. Rep. 6 I. A. 15; I. L. Rep. 4 Cal. 744.**

See **Jain Law. 3.**

SHIB NARAIN BOSE *v.* RAM NIDHEE BOSE...**9 W. Rep. 87.**

Overruled by RAJKISHORE LAHOORY *v.* GOBIND CHUNDER LAHOORY...**I. L. Rep. 1 Cal. 27; S. C. 24, W. Rep. 234; L. Rep. 4 I. A. 153.**

See **Hindu Law—Inheritance—Brother. 1.**

SIVA *v.* CHENAMA.....**5 Mad. H. C. Rep. 417.**

Not followed in POONA KOOER...**I. L. Rep. 1 Cal. 101.**

See **Review. 4.**

SKINNER *v.* ORDE.....**I. L. Rep. 1 All. 230.**

Reversed on appeal in...**L. R. 6 I. A. 126.**

See **Petition for Leave to sue in forma Pauperis.**

SOHUN LALL *v.* GYA PARSHAD...**H. C. Rep. N. W. P. 1874, p. 265.**

Followed in PURAN MAL *v.* ALI KHAN...**I. L. Rep. 1 All. 235.**

See **Civil Procedure Code, Act VIII. of 1859, § 260. 1.**

SOKHEE MONEE DEBIA *v.* BRIJORAJ MOOKERJEE. **17 W. Rep. 228.**

Followed in HURRODURGA CHOWDHRAIN *v.* SHARRAT SOONDERY DABEEA ...**I. L. Rep. 4 Cal. 674.**

See **Execution of Decree. 20.**

SOORJOMONEE DAYEE *v.* SUDDANAND MOHAPATTER.....**12 Beng. L. Rep. 304.**

Approved in KRISHNA BEHARI ROY *v.* BROJESWARI CHOWDRANEE...**L. Rep. 2 I. A. 283; I. L. R. 1 Cal. 144; 25 W. R. 1.**

See **Res Judicata. 9.**

SREEMUTTY RABUTTY DOSSEE *v.* SIBCHUNDER MULLICK.....**6 Moo. I. A. 1.**

Explained in MUSST. BHAGBUTTI DAEE *v.* CHOWDHRY BHOLANATH THAKOOR...**L. R. 2 I. A. 256.**

See **Hindu Law—Alienation by Widow. 1.**

SRI GAJAPATHI RADHIKA *v.* SRI GAJAPATHI NILMAN...**13 Moo. I. A. 497, 501; 6 Beng. L. Rep. 202; 14 W. Rep. P. C. 33.**

Commented on and explained in RHAI *v.* GOVIND.....**1. L. Rep. 1 Bom. 97.**

See **Hindu Law—Inheritance—Illegitimate Son. 4.**

SYUD AMEER HOSSEIN *v.* SHEO SUHAE...**19 W. Rep. 338.**

Followed in ZOOLFUN BIBEE *v.* RADHICA PROSONNO CHUNDER...**I. L. Rep. 3 Cal. 560; 1 Cal. Rep. 388.**

See **Right of Occupancy. 1.**

TEEKA DHAREE SINGH *v.* MOHUR SINGH...**7 W. Rep. 260.**

Followed in LALLA NOWBUT LALL *v.* LALLA JEWAN LALL...**I. L. Rep. 4 Cal. 831; 2 Cal. Rep. 319.**

See **Mahomedan Law—Pre-emption. 1.**

THAKUR PRASAD *v.* ASHAN ALI....**I. L. Rep. 1 All. 668.**

Dissented from by *Stuart*, C. J., in UDA BEGAM *v.* IMAM-UD-DIN...**I. L. Rep. 2 All. 74.**

TILAK CHUNDER ROY *v.* RAM LUCKHEE DOSSEE. **2 W. Rep. 41.**

Digitized by Google

Overruled by RAJKISHORE LAHOORY *v.* GOBIND CHUNDER LAHOORY...**I. L. Rep. 1 Cal. 27; S. C. 24 W. Rep. 234; L. Rep. 4 I. A. 153, n.**

See **Hindu Law—Inheritance—Brother. 1.**

TIMAPPA *v.* PARMESHRIAMA...**5 Bom. H. C. Rep. A. C. J. 130.**

Disapproved of in SAVITRIBAI *v.* LUXMIBAI. **I. L. Rep. 2 Bom. 573.**

See **Hindu Law—Maintenance of Widow. 14.**

TIRUMALASAMMI REDDI *v.* RAMASAMMI REDDI... **6 Mad. H. C. Rep. 420.**

Dissented from in SHIRO KUMARI DEBI *v.* GOVIND SHAW TANTI..... **I. L. Rep. 2 Cal. 418.**

See **Declaratory Decree. 6.**

VIJIA RANGAM *v.* LUKSHMAN...**8 Bom. H. C. Rep. O. C. J. 244.**

As to the doctrine laid down in the judgment of *West*, J., that, according to the Mitakshara, all property inherited by women is *stridhan*, the High Court of Calcutta (*Couch*, C. J., and *Ainslie*, J.) say in *Chotay Lall* v. *Chunnoo Lall* ..... **L. R. 6 I. A. 15, p. 22.**

"He lays down that the Mitakshara includes in *stridhan* all property acquired by women by inheritance, which is contrary to what had been laid down by Sir J. Arnould in *Bhaskar Trimback Acharya* v. *Mahadev Ramji* (6 Bom. H. C. Rep. O. C. J. 1), and also to the decision of the Privy Council in *Bhugwandeen Doobey* v. *Myna Baie* (11 Moo. I. A. 487). When we have the various decisions of the Sudder Court here upon the law which is applicable in this suit, and the decision of the High Court at Madras (in the *Shivaganga case*, 6 Mad. H. C. Rep. 310) upon a similar law, in which no substantial difference can be pointed out with reference to this question, we ought not to unsettle the law which appears to have been received on this side of India for the last fifty years on account of the opinion of a Judge of the High Court of Bombay, however learned he may be."

And the Privy Council, at p. 32, say that their Lordships "agree in the observations which are to be found at the end of the judgment of the High Court, that Courts ought not to unsettle a rule of inheritance affirmed by a long series of decisions, unless it is manifestly opposed to law and reason."

VINAYAK ANANDRAV *v.* LAKSHMIBAI...**1 Bom. H. C. Rep. 117-126; 9 Moo. I. A. 516; 3 W. Rep. P. C. 41.**

Followed in SAKHARAM S. ADHIKARI *v.* SITABAI..... **I. L. Rep. 3 Bom. 353.**

And DHONDU GURAV *v.* GANGABAI...**Ibid. 369.**

See **Hindu Law—Inheritance—Sister.**

VINAYAK VASUDEV *v.* RITCHIE, STEUART & Co. **4 Bom. H. C. Rep. O. C. J. 139.**

Followed in PEARSON *v.* MADHUB CHUNDER GHOSE.....**I. L. Rep. 2 Cal. 387, n.**

See **Sheriff's Poundage. 2.**

WIDOW OF SHUNKUR SAHAI *v.* RAJAH KASHI PERSHAD ..... **L. Rep. 4 I. A. 198, n.**

Approved in GAURI SHUNKUR *v.* MAHARAJAH OF BULRAMPORE.....**L. Rep. 6 I. A. 1.**

Under **Act I. of 1869. 4.**

WOOD *v.* WARD...**3 Ex. 478; 18 L. J. (Ex.) 305.**

Approved in RAMESHUR PERSHAD NARAIN SINGH *v.* KOONJ BEHARI PATTUK.....**L. Rep. 6 I. A. 33.**

See **Artificial Watercourse.**

Digitized by Google

Digitized by Google

DIGEST OF CASES REPORTED

IN THE

INDIAN LAW REPORTS,

CALCUTTA SERIES, Vols. 1 to 4; BOMBAY SERIES, Vols. 1 to 3; ALLAHABAD SERIES, Vols. 1 & 2; MADRAS SERIES, Vols. 1 & 2;

AND

LAW REPORTS, INDIAN APPEALS, Vols. 1 to 6.

ABANDONMENT OF CONFISCATION.

See **Confiscation in Oudh. 2.**

PRINCE MIRZA JEHAN *v.* NAWAB ASSUR BAHU.....**L. Rep. 6 I. A. 76; I. L. Rep. 4 Cal. 727.**

ABANDONMENT OF DEFENCE OF LIMITATION (UNDER ACT XIV. OF 1859).

See **Limitation. 3.**

MORU *v.* GOPAL..... **I. L. Rep. 2 Bom. 120.**

ABANDONMENT OF EASEMENT.

See **Easement. 1.**

SHAMA CHURN *v.* TARINEY CHURN. **I. L. Rep. 1 Cal. 422.**

ABANDONMENT OF FAMILY CUSTOM.

See **Family Custom.**

RAJKISHEN *v.* RAMJOY SURMA...**I. L. Rep. 1 Cal. 186.**

ABANDONMENT OF GROUND OF APPEAL.

See **Review. 11.**

SABAPATHI *v.* SUBRAYA ..... **I. L. Rep. 2 Mad. 58.**

ABANDONMENT OF INFANT.

See **Conviction on several Charges. 3.**

EMPRESS *v.* BANNI...**I. L. Rep. 2 All. 349.**

ABANDONMENT OF MIRAS RIGHTS.

See **Miras. 3. 4.**

TARACHAND *v.* LUKSHMAN...**I. L. Rep. 1 Bom. 91.**

JOTI BHIMRAV *v.* BALU BAPUJI... **Ibid. 208.**

ABANDONMENT BY MIRASDARS— Miras—Razinama—*Extinction of* Miras *Rights.*] *B.*, a *Mirasdar*, addressed a *rasinama* to the Mamlatdar resigning certain *Miras* lands in favour of *L.* (to whom at the same time he delivered possession of the land), and containing no reservation or qualification:—*Held*, that the tranfer to *L.* was complete, and the right of *B.* wholly extinguished. TARACHAND PIRCHAND *v.* LAKSHMAN BAVANI. *West* and *Nanabhai Haridas*, JJ ..... **I. L. Rep. 1 Bom. 91, 1875.**

2. —— Razinama—*Abandonment of* Miras *Rights.*] A *Mirasdar* who has given in a *rasinama* is entitled to eject the tenant put into possession by the Collector, provided he sue within the period of limitation, and the *rasinama* contains no stipulation whereby he expressly abandons his *Miras* rights. JOTI BHIMRAV *v.* BALU BIN BAPUJI. *Warden* and *Gibbs*, JJ.... **I. L. Rep. 1 Bom. 208, 1868.**

ABATEMENT OF APPEAL — CIVIL. *Death of Appellant—Act VIII. of* 1859, § 73—*Right of Purchaser to carry on Special Appeal.*] *A.* sued *B.* in the Court of first instance, and obtained a decree declaring *A.*'s right to a house. The District Court in appeal reversed this decree and rejected *A.*'s claim. The High Court reversed this decree and remanded the case. The District Court, on remand, made a decree con-

Digitized by Google

ABATEMENT OF APPEAL — CIVIL— *contd.*

firming the decree of the Court of first instance in *A.*'s favour. Subsequently to this last mentioned decree *B.* sold the house to *C.* *B.* then preferred a special appeal, but died before it was heard:—*Held*, that under Act VIII. of 1859 *C.* could not carry on the special appeal. At the time of his purchase, *B.*'s alleged right as owner had been pronounced against by a Court of competent jurisdiction. What remained to him was a right to challenge that decision by a special appeal. On purchasing this right, *C.* purchased it subject to the chance of *A.*'s title becoming unimpeachable on account of *B.*'s failing through death to make or carry on the possible appeal, and not a right after *B.*'s death to continue the litigation on his own account. The property sued for, if it did not become *res religiosa*, in the full sense of the Roman Law, so soon as the parties were at issue, was yet so bound when a decree had awarded it to the plaintiff, that it could not effectively be assigned to a third party so as to give a new term of life to the litigation which, in the absence of the assignment, would have died with *B.* MORESHWAR PHATAK *v.* KUSHABA SHANKROJI. *West* and *Bayley*, JJ..... **I. L. Rep. 2 Bom. 248.**

ABATEMENT OF APPEAL — CRIMINAL.

Criminal Procedure Code, Act X. of 1872, §§ 280-297—*Death of Appellant.*] The Criminal Procedure Code (Act X. of 1872) gives no right to the heir, devisee, executor, or any other representive of a deceased convict to lodge an appeal, or continue an appeal already lodged. The appeal lodged by the convict abates on his death. (*Kemball*, J., *diss.*) But the High Court has the right to call for the record and make such order thereon as it may consider just. IMPX. *v.* DONGAJI ANDAJI. *Westropp*, C.J., and *Melvill* and *Kemball*, JJ...**I. L. Rep. 2 Bom. 564, 1878.**

ABATEMENT OF PRIVATE NUISANCE.

See **Land held by Joint-Owners.**

EMPRESS *v.* RAJCOOMAR SINGH... **I. L. Rep. 3 Cal. 573; 2 Cal. Rep. 62.**

ABATEMENT OF PUBLIC NUISANCE— Suit for—

See **Right to sue. 1 to 5.**

ABATEMENT OF RENT—SUIT FOR.

See **Res Judicata. 10.**

NOBO DOORGA *v.* FOYZBUX ..**I. L. Rep. 1 Cal. 202.**

ABETMENT—Of Abetment.

See **Abetment. 3.**

—— Of Fabricating False Evidence.

See **Fabricating False Evidence.**

EMPRESS *v.* MULA.....**I. L. Rep. 2 All. 105.**

——Of Bigamy.

See **Abetment. 2.**

—— Of False Evidence—Presumption.

See **Criminal Procedure Code, Act X. of 1872, § 471. 2.**

REG. *v.* BAIJOO LALL...**I. L. Rep. 1 Cal. 450.**

—— Of Kidnapping.

See **Abetment. 4.**

—— Substantive Offence—Conviction of Principal.

See **Abetment. 1.**

1. ——*Substantive Offence—Conviction of Principal.*] The offence of abetment under the Penal Code is a substantive offence. The punishment when the culprit has been present at the commission of the principal offence, is the same as for that offence; and the trial of it is not in any way dependent on the conviction of the person charged with the principal offence. The conviction of an abettor is, therefore, in no way dependent on the conviction of the principal. REG. *v.* MARUTI DADA AND OTHERS. *West* and *Nanabhai Harridas*, JJ....**I. L. Rep. 1 Bom. 15, 1875.**

2.——*Penal Code*, §§ 109 *and* 494—*Bigamy.*] A Mahomedan female infant, was given away in marriage by *A. S.*, one of her two paternal uncles and legal guardians, to *A. H.* Shortly afterwards, and while *A. H.* was living the infant was again given away in marriage by *A. S.* and *A. K.*, her other paternal uncle and legal guardian, to *D.*; but the infant herself was not present at, and took no part in, the ceremony, which *A. K.* caused to be performed in her name, nor was she ever consulted or communicated with, before the ceremony took place. *A. K.* and *A. S.*, the guardians of the infant, were then charged with having committed an offence punishable under §§ 109 and 494 of the Penal Code.

Digitized by Google

ABETMENT—*contd.*

At the trial before the Session Court *A. S.* was acquitted, on the ground that he had taken no part in the second marriage of the infant, but *A. K.* was convicted of the offence charged.

Held, on appeal, that to establish a charge of abetment under the Penal Code the accused must be proved to have instigated or aided some other person to commit the offence, or to have engaged with another in a conspiracy for the commission of the offence; but here the acquittal of *A. S.* put an end to the case of conspiracy, for except with *A. S.* there was no evidence to support a case of conspiracy; and, (assuming the validity of the former marriage, and the accused's knowledge of it), though the accused had committed an illegal act in disposing of his infant ward in marriage after he knew that she had been previously lawfully married, yet in doing this act he was, according to the evidence, the sole actor, and the act, though illegal, was not, if done by one person alone, an offence provided for by the Penal Code.

The practice of instituting criminal proceedings with a view to determining disputes arising in cases of this class condemned. EMPRESS *v.* ABDOOL KURREEM. *White* and *Prinsep*, JJ...**I. L. Rep. 4 Cal. 10; 3 Cal. Rep. 81, 1878.**

3. —— *Of Abetment—Penal Code*, § 108, *Expl.* 2-4; § 378, *Expl.* 5.] *A.* sought the aid of *B.* with the intention of committing a theft of the property of *B.*'s master. *B.*, with the knowledge and consent of his master, and for the purpose of procuring *A.*'s punishment, aided *A.* in carrying out his object. On the prosecution of *A.* for theft,—*Held*, that as the property was so taken with the knowledge of the owner, the offence of theft had not been committed.

Held, also, that the abetment of an abetment being an offence, and the prisoner having instigated *B.* to do that which, if committed, would have been an offence, he, the prisoner, had committed the offence of abetment, to constitute which it was not necessary that the act abetted should be committed, and, therefore, that the circumstance, that owing to the property being removed with the knowledge of the owner, the technical offence of theft had not been committed, did not exonerate *A.* EMPRESS *v.* TROYLUKHO NATH CHOWDHRY. *Jackson* and *White*, JJ....**I. L. Rep. 4 Cal. 366; 3 Cal. Rep. 525, 1878.**

4.——*Kidnapping—Penal Code*, §§ 116, 363.] The accused was convicted by the Magistrate of abetting the kidnapping of a minor. The accused, knowing that the minor had left home without the consent of his parents, and at the instigation of one Komaren, the actual kidnapper, undertook to convey the minor to Kandy, in Ceylon, and was arrested at Trichinopoly on his way there. The Session Judge reversed the conviction, on the ground that there was no concert between the accused and Komaren previous to the completion of the kidnapping by the latter:—*Held*, that so long as the process of taking the minor out of the keeping of his lawful guardian continued, the offence of kidnapping might be abetted, and that in the present case the conviction should be of an offence punishable under §§ 116 and 363 of the Penal Code. REG. *v.* SAMIA KAUNDAN. *Morgan*, C.J., and *Innes*, J. **I. L. Rep. 1 Mad. 173, 1876.**

ABSENCE OF FORMAL FINDING ON ISSUE DETERMINED—No ground for Review.

See **Review. 11.**

SABAPATHI *v.* SABRAYA...**I. L. Rep. 2 Mad. 58.**

ABSENCE OF NOTICE TO QUIT—Objection as to—not raised in Memorandum of Special Appeal, not allowed at Hearing.

See **Practice—Civil. 10.**

BABAJEE *v.* NARAYAN...**I. L. Rep. 3 Bom. 340.**

ABSENCE OF REASONABLE AND PROBABLE CAUSE.

See **Act XVIII. of 1850. 2.**

COLLECTOR OF SEA CUSTOMS *v.* PUNNIAR—**I. L. R. 1 Mad. 89.**

See **Champerty. 2.**

RAJ COOMAR *v.* CHUNDER CANTO. **L. Rep. 4 I. A. 23; I. L. Rep. 2 Cal. 233.**

See **Damages. 4.**

RAJ CHUNDER *v.* SHAMA SOONDERI. **I. L. Rep. 4 Cal. 583.**

ABSENCE OF VENDOR, REGISTRATION IN.

See **Registration. 2.**

SAH MUKHUN *v.* SAH KOONDUN... **L. Rep. 2 I. A. 210; 15 Beng. L. Rep. 228; 24 W. Rep. 75.**

Digitized by Google

ABSENTEE HEIR OF DECEASED MAHOMEDAN—When bound by Consent Decree obtained by Creditor of Deceased against Heirs in possession of Deceased's Property.

See **Mahomedan Law. 1.**

ASSAMATHUN NESSA *v.* ROY LUTCHMEPUT...**I. L. Rep 4 Cal. 142; 2 Cal. Rep. 223.**

ABSOLUTE GIFT.

See **Will. 2.**

ADMINISTRATOR-GENERAL OF BENGAL *v.* APCAR...**I. L. Rep. 3 Cal. 553.**

ABUSE—Suit for Damages for—Parties.

See **Parties to Suit. 6.**

SUBHAIYAR *v.* KRISTNAIYAR...**I. L. Rep. 1 Mad. 383.**

ACCEPTANCE OF "DASTURI" BY PUBLIC SERVANT.

See **Penal Code, § 165.**

EMPRESS *v.* KAMPTA PRASAD... **I. L. Rep. 1 All. 580.**

ACCEPTOR—Bankruptcy of.

See **Procedure—Civil. 1.**

BASANT RAM. *v.* KOLAHAL...**I. L. Rep. 1 All. 392.**

ACCOMMODATION ACCEPTOR—Subsequent Receipt of Consideration by—from Drawer—Trust Deed for Benefit of Creditors executed by Drawer—Liability of—

See **Principal and Surety. 4.**

POGOSE *v.* BANK OF BENGAL...**I. L. Rep. 3 Cal. 174.**

ACCOMPLICE—

—— Corroboration of—Confession of Co-Accused is not.

See **Evidence. 12.**

REG. *v.* BUDHU NANKU...**I. L. Rep. 1 Bom. 475.**

—— Corroboration of—Unnecesary for *Legality* of Conviction.

See **Evidence. 12a.**

REG. *v.* RAMASAMI PADAYACHI... **I. L. Rep. 1 Mad. 394.**

—— Illegally Pardoned—Proceedings against.

See **Evidence. 2.**

REG. *v.* HANMANTA...**I. L. Rep. 1 Bom. 610.**

ACCOUNT—Balance of—Suit for—Jurisdiction of Mofussil Small Cause Courts.

See **Small Cause Court—Mofussil. 7.**

DYEBUKEE *v.* MUDHOO ... **I. L. Rep. 1 Cal. 123.**

—— Credit in.

See **Letters Patent, Bombay, 1865, Cl. 12. 1.**

MULCHAND *v.* SUGANCHAND...**I. L. Rep. 1 Bom. 23.**

—— of Dharmakartaship—Right to.

See **Limitation. 64.**

MANALLY *v.* VAIDELINGA...**I. L. Rep. 1 Mad. 343.**

—— Error in.

See **Bond to Secure Balance of Account.**

NARRAYAN *v.* MOTTILLAL.....**I. L. Rep. 1 Bom. 45.**

—— Error in Statement of.

See **Contract. 5.**

SETH GOKULDASS GOPALDASS *v.* MURLI...**L. Rep. 5 I. A. 78; I. L. Rep. 3 Cal. 602; 2 Cal. Rep. 156.**

—— Limitation—Principal and Agent—Continuous Account—Mutual Items.

See **Limitation. 34.**

WATSON *v.* AGA MEHEDEE SHERAZEE...**L. R. 1 I. A. 346.**

—— In Partition Suit.

See **Hindu Law—Partition. 1.**

LAKSHMAN NAIK *v.* RAMCHANDRA NAIK...**I. L. Rep. 1 Bom. 561.**

—— Of Profits obtained by Infringement of Patent—Limitation.

See **Limitation. 50.**

KINMOND *v.* JACKSON...**I. L. Rep. 3 Cal. 17; 1 Cal. Rep. 66.**

—— Reference to Commissioner to take—Effect of.

See **Account. 2, 3.**

1.—— *Apportionment—Decree—Construction—Amendment of Decree.*] The decree of the Court of first instance directed the Commissioner for taking Accounts to take an account of the moneys paid by the plaintiff in Bombay during the period between the 24th January 1865 and the

Digitized by Google

ACCOUNT—*contd.*

date of the institution of the suit, being six years, for the use and at the request of the defendants, in respect of *hundis* drawn on the plaintiff by the defendants, and to allow credit to the defendants for the sums in that behalf mentioned in the particulars of demand annexed to the plaint, and for all other sums, if any, in respect of which the defendants should prove themselves entitled to credit, wherever the same might have become payable. The defendants in their surcharge to the plaintiff's account claimed credit for payments made by them between the 25th January 1865 and 5th July 1865. The plaintiff admitted the receipt of the payments mentioned in the defendants' surcharge, but claimed to appropriate them in satisfaction of his claim against the defendants in respect of moneys due by them prior to the 24th January 1865. The Commissioner held that the plaintiff was entitled to make such appropriation; but the Court of first instance, on the application of the defendants, made an order directing the Commissioner not to allow the plaintiffs to appropriate the payments mentioned in the defendants' surcharge in satisfaction of moneys due by them before the 24th January 1865, and explained the order of reference to mean that the whole of the account prior to the six years before the filing of the suit should be wiped out:—*Held*, that the construction put upon the decree by the Commissioner was correct. Where the Court of first instance puts a certain construction on its own decree, which the Appellate Court thinks wrong, and the words of the decree admit of another construction which the Appellate Court thinks right, the Appellate Court will put the latter construction on the decree. HIRJI JINA *v.* NARAN MULJI. *Westropp*, C. J., and *Sargent*, J...**I. L. Rep. 1 Bom. 1, 1875.**

2. —— *Reference to Commissioner—Effect of —Act VIII. of* 1859, § 181.] In a suit for an account, it was ordered by consent of the parties that the case should be referred to a Commissioner to take accounts, who in taking them was to decide upon all questions of fact, whether as to the delivery of certain merchandize, or the value of the merchandize delivered, or otherwise, with full power for the purposes of the investigation; and that if any questions of law should arise and could not be settled or disposed of before the Commissioner, they were to be submitted to the Court:—

ACCOUNT—*contd.*

Held, that this was a reference different from the ordinary reference to a Commissioner to examine accounts under § 181 of Act VIII. of 1859. Whether it would be competent to the Court to re-open a question of account against a clear finding upon a question of fact relating to the account, and made by the Commissioner upon the evidence properly before him, *quære*. WATSON *v.* AGA MEHEDEE SHERAZEE.....**L. Rep. 1 I. A. 346, 1874.**

S. C. under **Limitation. 34.**

3. ——*Power of Commissioner to grant Certificates— Supreme Court Rules (Equity), 371 and* 456.] A suit was, by an order of the High Court, referred to the Commissioner for taking Accounts "to take an account between the parties as prayed for in the plaint and written statement respectively, and to ascertain and report what balance, if any, was due from or by either of them to the other." In the inquiry before the Commissioner the defendants alleged that the accounts between them and the plaintiff had been adjusted in 1860 and 1861. The plaintiffs denied the adjustment, and evidence was taken on the point. Neither in the plaint, written statement, or decree or order of reference, was any question of adjustment of accounts raised or mentioned. One of the plaintiff's witnesses, who had been in the service of the defendants, produced a copy letter-book containing copies of letters, which he alleged he wrote to the defendants. The plaintiffs tendered the copy of one of those letters in evidence. The defendants objected to its admissibility, on the ground of its irrelevancy to the question whether an adjustment had taken place as alleged. The Assistant Commissioner admitted the letter in evidence, and at the defendant's request granted a certificate under Rule 371 (Supreme Court Rules), certifying that the Commissioner had decided to admit in evidence the press copy of the letter. The certificate did not show, on the face of it, how the question was important, or how it affected the inquiry being held, nor did the Commissioner state that he had any doubt as to the construction of the order of reference, or as to the correctness of his decision admitting the press copy, or that he desired the opinion of the Court on the question decided by him.

On motion by the defendant, to overrule the decision of the Assistant Commissioner, and for a declaration that the said letter was inadmissible in evidence:—

Digitized by Google

ACCOUNT—*contd.*

Held, that the application was irregular and not in accordance with the practice and procedure of the Court, and must be refused with costs. The Court was not bound because the Commissioner had certified that he had admitted a certain letter in evidence, either to uphold or reverse his decision, or consider it in any way, till he had arrived at, and certified, something which could be called a result, either of the whole inquiry or of some part or branch of it.

The general nature of a certificate or report, whether general or separate, is that it should in the case of a general certificate comprise the *result* of all the proceedings under the decree or order of reference, or, in the case of a separate certificate or report, that it should comprise the result of some or one of such proceedings.

Quære—Whether, where a suit has been referred to the Commissioner for the purpose of having accounts taken, such accounts, in the absence of any direction in the decree or order of reference, that stated or settled accounts are not to be disturbed, should not be taken without regard to any previous accounts stated or settled between the parties.

RUSTOMJI BURJORJI *v.* KESSOWJI NAIK. *Green*, J....**I. L. Rep. 3 Bom. 161, 1878.**

S. C. under **Civil Procedure Code, Act X. of 1877, § 8.**

ACCOUNT CURRENT.

See **Limitation. 34.**

WATSON *v.* AGA MEHEDEE SHERAZEE...**L. Rep. 1 I. A. 346.**

ACCOUNT IN REDEMPTION SUIT—Interest — Hindu Law — Rule of *Dam-Dupat.*

See **Hindu Law—Interest. 3.**

And *see* **Mortgage. 3.**

RAMCHANDRA *v.* BHIMRAV...**I. L. Rep. 1 Bom. 577.**

ACCOUNT BOOKS—Inspection of.

See **Inspection. 1.**

HAJI JAKARIA *v.* HAJI CASSIM.....**I. L. Rep. 1 Bom. 496.**

ACCOUNT BOOKS—*contd.*

1. —— *Evidence Act I. of* 1872, §§ 32 *and* 34—*Entries by person having no personal Knowledge—Account kept by Servant or Agent of Firm relevant as Admission.*] The Indian rule of evidence (Evidence Act, § 32, Cl. 2, and § 34) simply requires that entries in accounts should, in order to be relevant, be regularly kept in the course of business; and though it may no doubt be important to show that the person making or dictating the entries had, or had not, personal knowledge of the fact stated, that is a question which, according to the Indian rule of evidence, affects the value, not the admissibility of the entries. Account-books not proved to have been regularly kept in the course of business, but proved to have been kept by a servant, or agent appointed for that purpose, of a firm of contractors, are relevant as admissions against the firm. REG. *v.* HANMANTA. *Melvill* and *Kemball*, JJ... **I. L. Rep. 1 Bom. 610, 1877.**

S. C. under **Evidence. 2.**

ACCOUNT STATED—Signed—Contract in Writing.

See **Limitation. 47.**

HANMANTLAL MOTICHAND *v.* RAMABHAI...**I. L. Rep. 3 Bom. 198.**

ACCOUNTS—Motion to vary or discharge Report of Commissioner for taking.

See **Practice—Civil. 7.**

SUMAR AHMED *v.* HAJI ISMAIL..., **I. L. Rep. 1 Bom. 158.**

—— Order of Reference to Commissioner for taking—Manner of Taking — Adjusted Accounts.

See **Account. 3.**

RUSTOMJI BARJORJI *v.* KESSOWJI NAIK...**I. L. Rep. 3 Bom. 161.**

—— Partnership—Suit for Dissolution and.

See **Jurisdiction. 6.**

RAMASAMI *v.* THERUVENGADASAMI. **I. L. Rep. 1 Mad. 340.**

ACCRETION.

See **Re-formation of Submerged Land.**

HURSUBAI *v.* SYUD LOOTE...**L. Rep. 2 I. A. 28; 14 Beng. L. R. 268; 23 W. R. 8.**

—— *Riparian Proprietors—Beng. Reg. XI. of* 1825, §§ 2 *and* 4, *Cl.* 1, 2—*Effect of sudden Change of Course of Boundary River.*] The lands in suit (in Tirhoot) were settled under Beng. Reg. XI. of 1825, § 4, Cl. 1, with the

Digitized by Google

ACCRETION—*contd.*

plaintiff's predecessor in 1837, as the proprietor of an estate to which the lands had become an accretion by gradual accession, and the plaintiffs continued in possession thereof till the expiration of the settlement in 1847, which was made on the same principle. Prior to the renewal of the settlement in 1857, the river which was to the south of the plaintiff's Zemindary in Tirhoot, and to the north of the defendant's in Sarun, had suddenly and so competely changed its course that the lands in suit, which were formerly on the north side of the river, were capable of being identified on the south side, and were notwithstanding summarily settled with the defendant, who obtained possession of them.

Held, that in the absence of proof of usage within the meaning of § 2 of the Regulation, that the river should be not merely the boundary between the two districts of Tirhoot and Sarun, but also the boundary between the two Zemindaries, the plaintiffs were entitled to the lands. RUGHOOBUR DYAL SAHOO *v.* MAHARAJAH KISHEN PERTAB SAHE...**L. Rep. 6 I. A. 211, 1879.**

ACCUMULATIONS BY HINDU WIDOW.

See **Hindu Law— Alienation by Widow. 1.**

MUSST. BHAGBUTTI DAEE *v.* CHOWDHRY, BHOLANATH THAKOOR... **L. Rep. 2 I. A. 256; I. L. Rep. 1 Cal. 104.**

ACCUSED PERSON—Convicted Person is not an.

See **Criminal Procedure Code, Act X. of 1872, § 390. 1.**

REG. *v.* THAKUR PARSHAD...**I. L. Rep. 1 All. 151.**

—— Discharge of—Revival of—Prosecution.

See **Compounding Offences. 5.**

IMPX. *v.* DEVAMA...**I. L. Rep. 1 Bom. 64.**

See **Criminal Procedure Code, Act X. of 1872, § 142. 1.**

IMPX. *v.* GOWDAPA...**I. L. Rep. 2. Bom. 584.**

See **Criminal Procedure Code, Act X. of 1872, § 295. 1.**

DIJAHUR DUTT...**I. L. Rep. 4 Cal. 647.**

See **The Cases under Revival of Prosecution.**

ACCUSED PERSON—*contd.*

—— Evidence of an—Illegally Pardoned.

See **Evidence. 2. 3. 4.**

REG. *v.* HANMANTA...**I. L. Rep. 1 Bom. 610.**

EMPRESS *v.* ASHGAR ALI...**I. L. Rep. 2 All. 260.**

EMPRESS *v.* KARIM... **I. L. R. 2 All. 386.**

——Examination of—Defectively Recorded.

See **Evidence. 12. 14.**

REG. *v.* SHIVA...**I. L. Rep. 1 Bom. 219.**

EMPRESS *v.* NAIMOO TAMOLEE... **I. L. Rep. 4 Cal. 696.**

See **Criminal Procedure Code, Act X. of 1872, § 122. 1. 2.**

IMPX. *v.* MALKA.....**I. L. Rep. 2 Bom. 643.**

EMPRESS *v.* RAMANJIYA.....**I. L. Rep. 2 Mad. 5.**

—— Right of—to Recall and Cross-examine Witnesses for Prosecution.

See **Practice—Criminal. 1.**

EMPRESS *v.* BALDEO SAHAI...**I. L. Rep. 2 All. 253.**

ACKNOWLEDGMENT OF BROTHERHOOD.

See **Mahomedan Law—Acknowledgment of Brotherhood.**

MIRZA HIMMUT BAHADOOR *v.* MUSSAMUT SAHEBZADEE BEGAM. **L. Rep. 1 I. A. 23.**

ACKNOWLEDGMENT OF DEBT.

—— Bond in Consideration of Barred Debt.

See **Limitation. 42.**

RAGHOJEE *v.* ABDUL...**I. L. R. 1 Bom. 590.**

—— *Signature—Agent—Act IX. of* 1881, § 20.] In a suit to recover the balance of an account of the transactions between the plaintiff and defendant, the plaintiff, with reference to certain items of his claim which would otherwise have been barred by limitation, relied on a letter written by the defendant's *gomashta* by the defendant's direction in the following terms:—"Written by Babu Lal" (the defendant) "to Shah Benarsi Das" (the plaintiff). "I have received my account, in which you have struck a balance of Rs. 17,679-2-0. The account is correct, but it has not been running for the last two or three years, and my papers are at Lashkar. I shall send for the paper from Lashkar in Phagun, and, after examining them, shall

Digitized by Google

ACKNOWLEDGMENT OF DEBT—*contd.* make *pucka* debit and credit entries in my accounts, and shall write to you to do the same; then I shall make arrangement for the money. * * * I shall examine the accounts according to the terms agreed upon by us. We shall give credit for any mistake on either side. All right. Magser Sudi 10th, Sambat 1931. If there be any mistake, credit shall be given or taken." The latter portion of this letter commencing from the words "All right," was in the handwriting of the defendant himself:—

Held, 1*st*, that the effect of the letter was to admit the existence of a debt due by the sender to the person addressed. While admitting that the account rendered was on the face of it correct, the sender of the letter reserved to himself the right of testing the account by his own books before finally allowing it to be correct, and then promising to pay what may be due at a time stated, and such an acknowledgment was a sufficient acknowledgment to satisfy the Limitation Act IX. of 1871, § 20.

2*nd*, whenever the maker of an instrument, or his agent acting with authority, introduces the name of the maker with a view to authenticate the instrument as the instrument of the maker, such an introduction of the name is a sufficient signature to satisfy the statute; and that the heading of the above letter was, therefore, a sufficient signature thereof, within the meaning of the Limitation Act; and the defendant's admission that the letter was written by his *gomashta* by his orders, and the circumstance that he added the concluding paragraph, was sufficient evidence that such heading was written by a duly authorised agent. The letter, therefore, constituted a sufficient acknowledgment of the debt to satisfy the Act. MATHURA DAS *v.* BABU LAL. *Turner*, C.J. (Offg.), and *Pearson*, J....**I. L. Rep. 1 All. 683, 1878.**

ACKNOWLEDGMENT OF DEBT BY JUDGMENT DEBTOR.

See **Kistbandi.**

HEERA LALL *v* DHUNPUT...**I. L. Rep. 4 Cal. 500; 3 Cal. Rep. 554.**

See **Limitation. 43. 44.**

KALLY PROSONNO HAZRA *v.* HEERA LALL MUNDLE...**I. L. Rep. 2 Cal. 468.**

MUNGOL PRASHAD DICHIT *v.* SHAMA KANTO LAHORY CHOWDHRY.....**I. L. Rep. 4 Cal. 708.**

ACKNOWLEDGMENT OF MORTGAGOR'S TITLE—*Act IX. of* 1871, *Sch. II., Art.* 148.] In a suit brought by the plaintiffs to redeem a mortgage of certain lands alleged to have been made by their ancestors in 1811, it appeared that in 1841 the ancestors of the defendants had signed a *Khewat* or record of rights, in which no mention of the nature of the mortgage or of the mortgagors was made, but in which they were described as mortgagees, and as holding certain shares, but there was no record of the names of the owners of those shares. The defendants' ancestors had also in that year signed the *Khatanni Shara asamiwar*, which showed the rates of rent payable by the tenants, and in which they were also described as mortgagees, and which contained a note by the officer making the settlement, that "the parties in possession are mortgagees, but the amount of the mortgage and its duration are unknown; it occurred before the British occupation":—

Held by *Turner*, C.J. (Offg.), and *Oldfield*, J., that there had been a sufficient acknowledgment of the mortgagor's right to redeem within the meaning of Act IX. of 1871, Sched. II., Art. 148. An acknowledgment that a mortgage is a subsisting mortgage is an acknowledgment of the mortgagor's right to redeem, if he establishes his title. The law of India does not require that the acknowledgment should be given to the mortgagor.

By *Pearson*, J., that an acknowledgment of a mortgage tenure is by implication an acknowledgment of the title of an owner; and other evidence may be admitted to show who is the person possessing that title to whom the acknowledgment refers. An express acknowledgment of the title of any particular person, or of his right to redeem, is not necessary.

By *Spankie* J., *contra*:—Any one who desires to take his claim out of the operation of Act IX. of 1871, Sched. II., Art. 148, must show a clear and express acknowledgment in writing of the title of the mortgagor, or of his right to redeem, and this acknowledgment must be unqualified and made touching the mortgage, and cannot be implied from a general admission, as in the present case, of the accuracy of settlement records dealing with a great variety of matters. DAIA CHAND *v.* SARFARAZ...**I. L. Rep. 1 All. 117, 1876.**

2. —— *Act XIV. of* 1859, § 1, *Cl.* 15—*Act IX. of* 1871, *Sched. II., Art* 148—*Redemption*—

Digitized by Google

ACKNOWLEDGMENT OF MORTGAGOR'S TITLE—*contd.*

Acknowledgment made before 1859.] In a suit for redemption of mortgaged property, the plaintiffs, the representatives of the mortgagors, relied on an acknowledgment of the mortgagor's title contained in an entry in the settlement records of the year 1841, which was attested by the representatives of the mortgagees, the defendants in the suit: and the lower Courts having differed as to whether the acknowledgment was sufficient without proof that it was made within sixty years from the date of the alleged mortgage:—

Held, that before the enactment of Cl. 15, § 1 of Act XIV. of 1859, there was no limitation to suits for redemption of mortgage of landed property. In 1841, therefore, when the acknowledgment found in the settlement records was made by the defendants or their forefathers, that they held the property in suit as mortgagees, there was nothing in the law to preclude the mortgagor from suing for the redemption of the mortgage. In other words, the right acknowledged was a right not extinguished by lapse of time, but still subsisting; the acknowledgment fulfilled the intention and satisfied the requisition of the clause in Art. 148, Sched. II. of Act IX. of 1871, modifying the provisions of Cl. 15, § 1 of Act XIV. of 1859, and rendered it unnecessary to inquire and ascertain when the mortgage, acknowledged in 1841, was actually made. DAIA CHAND *v.* SARFARAZ ALI. *Pearson* and *Spankie*, JJ.. **I. L. Rep. 1 All. 425, 1877.**

3.——*Signed by Agent—Act XIV. of* 1859—*Act IX. of* 1871, *Sched. II., Art.* 148.] *Held*, following *Luchmee Buksh Roy* v. *Runjeet Roy Panday* (13 Beng. L. Rep. 177), that an acknowledgment of the title of a mortgagor, or of his right of redemption, signed by the mortgagee's agent, is not sufficient, under Art. 148, Sched. II. of Act IX. of 1871, to create a new period of limitation. RAHMANI BIBI *v.* HULASA KUAR. *Pearson* and *Turner*, JJ...**I. L. Rep. 1 All. 642, 1878.**

ACKNOWLEDGMENT OF RECEIPT OF CONSIDERATION FOR SALE OF LAND.

See **Registration. 12.**

VALAJI *v.* THOMAS...**I. L. Rep. 1 Bom. 190.**

ACKNOWLEDGMENT OF RECEIPT OF PART-PAYMENT OF DEBT ON MORTGAGE BOND.

See **Registration. 22.**

DALIP SINGH *v.* DURGA PRASAD... **I. L. Rep. 1 All. 442.**

ACKNOWLEDGMENT OF SIGNATURE OF TESTATOR.

See **Indian Succession Act X. of 1865, § 50, Cl. 3. 1.**

MANIKBAI *v.* HORMASJI...**I. L. Rep. 1 Bom. 547.**

ACQUIESCENCE.

See **Attorney and Client. 2.**

MONOHUR DASS *v.* ROMONAUTH LAW. **I. L. Rep. 3 Cal. 473.**

See **Execution of Decree. 1.**

BAIDA PRASAD *v.* AHMAD ALI... **I. L. Rep. 1 All. 368.**

See **Mortgage. 22.**

MORAN *v.* MITTU BIBEE...**I. L. Rep. 2 Cal. 58.**

—— Arbitration—Miscarriage of Arbitrators.

See **Arbitration. 7.**

CHOWDHRI MURTAZA HOSSEIN *v.* MUSST. BIBI BECHUNNISSA... **L. Rep. 3 I. A. 209.**

—— In Interruption of Easement.

See **Limitation. 48.**

SUBBRAMANIYA AYYAR *v.* RAMACHANDRA RAU...**I. L. Rep. 1 Mad. 335, 339.**

—— In Obstruction to Ancient Windows.

See **Mandatory Injunction.**

JAMNADAS *v.* ATMARAM...**I. L. Rep. 2 Bom. 133.**

1.—*Delay—Laches—Estoppel—Limitation.*] There must be something more than a mere delay in instituting proceedings to deprive a man of his legal remedies. But the opinion expressed in *Rama Rau* v. *Raja Rau* (2 Mad. H. C. Rep. 114, p. 116,) that "the equitable doctrine of laches and acquiescence is not applicable to suits in the Mofussil for which a period of limitation is provided by the Limitation Act" is not to be adopted without qualification. A distinction must be made between those cases in which a suitor seeks some relief which, if he proves his case, the Court is bound to grant him, and the cases in which he seeks relief which the

Digitized by Google

ACQUIESCENCE—*contd.*

Court has discretion to grant or refuse. When a suitor has a right to demand relief, a stronger case must be made out against him than such mere tardiness in seeking a remedy which might justify a Court in refusing relief when it has a discretion to grant or refuse it. With this qualification, the *dictum* in *Peddamuthulaty* v. *N. Timma Reddy* (2 Mad. H. C. Rep. 270, p. 273.) that "it may be taken as the law both of Courts of law and equity that mere laches, short of the period prescribed by the Statute of Limitation, is no bar whatever to the enforcement of a right absolutely vested in the plaintiff at the period of suit," assented to.

But where there is more than mere laches, where there is conduct or language inducing a reasonable belief that a right is foregone, the party who acts on the belief so induced, and whose position is altered by this belief, is entitled in India, as in other countries, to plead acquiescence, and if the plea is sufficiently proved, it ought to be held a good answer to an action, though the plaintiff may have brought the suit within the period prescribed by the law of limitation.

Where, therefore, the defendants took possession of, and erected buildings on, land which they knew to belong to the plaintiff, without asking the plaintiff's consent, and the plaintiff, knowing that the defendants were building on the land, abstained from commencing proceedings against them for two years:—*Held*, in a suit brought to eject the defendants and to have the building materials removed, that under the circumstances the delay in the institution of the suit did not deprive the plaintiff of the right to relief. UDA BEGAM *v.* IMAM-UDDIN. *Turner*, C. J. (Offg.), and *Oldfield*, J....**I. L. Rep. 1 All. 82, 1875.**

ACQUITTAL—Appeal against.

See **High Court Criminal Procedure, Act X. of 1875, § 147. 2.**

CORPORATION OF CALCUTTA *v.* BHEECUNRAM NAPITT...**I. L. Rep. 2 Cal. 290.**

—— Appeal from—by Jury—Right of Government.

See **Appeal—Criminal. 2.**

IMPX. *v.* HARI...**I. L. Rep. 2 Bom. 526, n.**

ACQUITTAL—*contd.*

—— Appeal from—Limitation.

See **Appeal—Criminal. 5.**

EMPRESS *v.* JYADULLA...**I. L. Rep. 2 Cal. 436.**

—— Appeal from—Preferred by Junior Government Pleader.

See **Appeal—Criminal. 4.**

EMPRESS *v.* JUDOONATH GANGOOLY...**I. L. Rep. 2 Cal. 273.**

—— Arrest by Magistrate Pending Appeal against—Power of High Court.

See **Criminal Procedure Code, Act X. of 1872, § 297. 2.**

REG. *v.* GHOLAM ISMAIL...**I. L. Rep. 1 All. 1.**

—— Arrest Pending Appeal against—High Court can direct.

See **Appeal—Criminal. 6.**

REG. *v.* GOBIN TEWARI...**I. L. Rep. 1 Cal. 281.**

——Judgment of.

See **Appeal—Criminal. 4.**

EMPRESS *v.* JUDOONATH GANGOOLY. **I. L. Rep. 2 Cal. 273.**

—— By Jury—Reference by Sessions Judge.

See **Criminal Procedure Code, Act X. of 1872, § 263. 1. 2. 3. 4.**

IMPX. *v.* KHANDERAO...**I. L. Rep. 1 Bom. 10.**

IMPX. *v.* BHAVANI.....**Ibid. 525.**

EMPRESS *v.* HARAI MIRDHA...**I. L. Rep. 3 Cal. 189.**

EMPRESS *v.* SAHAE RAE...**Ibid. 623.**

—— Power of High Court to interfere with an—where no Appeal by Government.

See **Criminal Procedure Code, Act X. of 1872, § 297. 5.**

EMPRESS *v.* DWARKANATH CHOWDHRY...**I. L. Rep. 2 Cal. 399, 401.**

—— Power of High Court as a Court of Revision to interfere with an.

See **Criminal Procedure Code, Act X. of 1872, § 297. 1. 3. 6.**

HARDEO...**I. L. Rep. 1 All. 139.**

AUROKIAM...**I. L. Rep. 2 Mad. 38.**

EMPRESS *v.* MIYAJI AHMED...**I. L. Rep. 3 Bom. 150.**

Digitized by Google

ACQUITTAL—*contd.*

—— Revision of—Right of Private Prosecutor to apply for

See NARAIN DAS...**I. L. Rep. 1 All. 610.**

See **Criminal Procedure Code, Act X. of 1872, § 297. 1. 3.**

HARDEO...**I. L. Rep. 1 All. 139.**

AUROKIAM...**I. L. Rep. 2 Mad. 38.**

—— Without asking Opinion of Assessors.

See **Assessors.**

NARAIN DAS...**I. L. Rep. 1 All. 610.**

ACQUITTAL OF PRINCIPAL—*Abetment*] The offence of abetment under the Penal Code is a substantive offence, and the acquittal of the principal is no bar to the conviction of the abettor. REG. *v.* MARUTI DADA and others. *West* and *Nanabhai Harridas*, JJ....**I. L. Rep. 1 Bom. 15, 1873.**

S. C. under **Abetment.**

ACT XVI. OF 1838—Proceeding under—not conclusive in Questions of Title.

See **Bombay Act V. of 1864.**

BASAPPA *v.* LAKSHMAPPA...**I. L. Rep. 1 Bom. 624.**

ACT XXXII. OF 1839—§ 1—Interest on Mesne Profits.

See **Interest. 12.**

HURROPERSAUD *v.* SHAMAPERSAUD...**L. Rep. 5 I. A. 31; S. C. I. L. Rep. 3 Cal. 654; 1 Cal. Rep. 499.**

ACT XX. OF 1841—Certificate under.

See **Certificate to collect Debts.**

TREEPOORASOONDERY *v.* DEBENDRONATH...**I. L. Rep. 2 Cal. 45.**

ACT V. OF 1843—*Mahomedan Law—Slavery*—Willa—*Heritable Rights of Emancipator of Slave.*] One *A.*, a Mahomedan, died in 1842, leaving two wives, *N.* and *P.*, the former of whom had been his slave but had been emancipated by him previous to her marriage. *N.* died in 1857. In a suit by a person claiming as sister and heiress of one of *A.*'s residuaries, against the granddaughter of *N.*, to recover the property left by her, on the ground that, according to the Mahomedan Law of *Willa*, she was entitled thereto, to the exclusion of the defendants:—

ACT V. OF 1843—*contd.*

Held, that it was the intention of the Legislature in passing Act V. of 1843 to relieve all persons then subject thereto from all the disabilities arising out of the status of slavery; and that, assuming that according to the Mahomedan Law of *Willa* the emancipator of a purchased slave is entitled to succeed and take the property of which such slave dies possessed or entitled to, to the disherison of her own natural heirs; such right of inheritance was taken away by Act V. of 1843, § 3. That Act was in force at the time of *N.*'s death; and the question who was entitled to succeed to her property was determinable by the law as it stood when the succession opened.

No vested interest had been acquired previous to the passing of the Act by the unascertained persons who might at *N.*'s death be the then residuary heirs of her husband; nor did he, by the act of emancipation, acquire a vested right which the statute could not, except, by express and retrospective words, take away.

In construing this remedial statute the widest operation ought to be given to it which its language will permit. The words of § 3, "that the person from whom the property may be derived was a slave," may well be taken to apply to any person who at any time had been a slave. SAYAD MIR UJMUDIN KHAN *v.* ZIA-UL-NISSA BEGAM...**L. Rep. 6 I. A. 137, 1879; I. L. Rep. 3 Bom. 423.**

ACT I. OF 1845, § 21—*Sale for Arrears of Revenue Purchase by Manager of Joint Hindu Family in his own name.*] A purchase at a sale for arrears of revenue under Act I. of 1845 made by the managing member of a joint Hindu family in his own name, but on behalf of the joint family, is not affected by § 21 of that Act, and notwithstanding anything contained therein, the members of the joint family may sue to enforce rights acquired by them under such purchase as against the managing member, though he is the sole certified purchaser. TOONDUN SINGH *v.* POKHNARAIN SINGH...**L. Rep. 1 I. A. 342, 1874; 22 W. R. 199.**

S. C. under **Review. 12.**

ACT XIX. OF 1844.

See **Issues. 1.**

APAYA *v.* RAMA...**I. L. Rep. 3 Bom. 210.**

Digitized by Google

ACT IX. OF 1847.

See **Settlement by Revenue Authorities.**

NARRAIN CHANDER *v.* TAYLOR...**I. L. Rep. 4 Cal. 103; 3 Cal. Rep. 151.**

ACT IX. OF 1850—§ 25—Title to Immoveable Property—Jurisdiction.

See **Small Cause Court—Presidency Town. 2.**

NOWLA OOMA *v.* WALJI KARIMJI... **I. L. Rep. 2 Bom. 91.**

—— § 34—Splitting Cause of Action—Tradesman's Accounts.

See **Small Cause Court—Presidency Town. 4.**

CASSUM JOOMA *v.* THUCKER LILLADHUR.....**I. L. Rep. 2 Bom. 570.**

—— § 42—Power to Restore Case struck off for Default in Appearance.

See **Small Cause Court—Presidency Town. 1.**

SIB CHUNDER *v.* KISSEN DYAL... **I. L. Rep. 1 Cal. 476.**

—— § 58—"Goods and Chattels"—Oil and Flour Mills and Engine and Boiler.

See **Fixtures.**

MILLER *v.* BRINDABUN...**I. L. Rep. 4 Cal. 946; 4 Cal. Rep. 460.**

—— § 78.

See **Execution of Decree. 24.**

In re JAGJIVAN NANABHOY... **I. L. Rep. 1 Bom. 82.**

—— 91—Title to Immoveable Property—Jurisdiction.

See **Small Cause Court—Presidency Town. 2.**

NOWLA OOMA *v.* BALA DHURMAJEE. **I. L. Rep. 2 Bom. 91.**

ACT XVIII. OF 1850 — *Jurisdiction—Good Faith.*] Under the provisions of Act XVIII. of 1850, § 1, no person acting judicially is liable for an act done or ordered to be done by him in the discharge of his judicial duty within the limits of his jurisdiction. In such a case the question whether he acted in good faith does not arise. MEGHRAJ *v.* ZAKIR HUSSAIN. *Turner* and *Spankie*, JJ. .....**I. L. Rep. 1 All. 280, 1876.**

ACT XVIII. OF 1850—*contd.*

2. —— *Good Faith—Suit against Officer of Sea Customs at Madras for act done without Jurisdiction—Malice—Reasonable and Probable Cause—Act VI. of* 1863.] The plaintiff in this case was a native merchant of Ceylon, residing in, and subject to the laws of that island, and not to the law of British India, and traded between Jaffna, where he resided, and Madras and other Indian ports, but had not been to Madras or other Indian port since the year 1850. The defendant was the Collector of Sea Customs in Madras. In the year 1873, having received some information that a certain vessel belonging to the plaintiff had brought opium to Jaffna, in Ceylon, on her voyage from Madras in July 1872, which information led the defendant to the conclusion that the opium was really consigned to the plaintiff in the name of another person, the defendant, without taking any legal advice, without making any inquiry of the plaintiff, or his agent at Madras, and without giving the plaintiff any notice of the proceeding against him, or any opportunity of being heard, telegraphed to the plaintiff in Ceylon, in October 1873, that he was fined Rs. 50,000 for having smuggled opium in July 1872, and proceeded to seize and sell certain property of the plaintiff then in Madras to satisfy this fine, which fine and seizure the defendant alleged was imposed and made under the provisions of Act VI. of 1863. In a suit brought by the plaintiff for damages for the wrongful and illegal fining of the plaintiff, and the seizure and conversion of his goods by the defendant, the plaint did not, except incidentally in the prayer for relief, contain any allegation that the defendant acted maliciously and without reasonable and probable cause :—

Held, that the act of the defendant being in its nature judicial, if he acted within his jurisdiction, would not render him liable to suit, even though the act was done maliciously ; if, on the other hand, he acted without jurisdiction, his liability would depend, not on whether the act was malicious and without reasonable and probable cause, but on whether it was within the protection of Act XVIII. of 1850.

Though when a law gives to certain persons or officials the power of adjudicating on a particular matter, their decision concludes the inquiry, and admitting that under the terms of Act VI. of 1863 an adjudication by the proper authorities

Digitized by Google

ACT XVIII. OF 1850—*contd.*

is conclusive, yet it is only so in cases falling within their jurisdiction. But the action of the defendant in the present case was beyond his jurisdiction, and his adjudication of the fine was, therefore, not conclusive. The defendant though acting judicially in adjudging penalties under Act VI. of 1863, was not in the position of a judicial officer possessing general jurisdiction and having general powers for enforcing such jurisdiction. He acted by virtue of a special and limited authority given him by the law, which authority failed if he attempted to exercise it in any case not falling within the terms of the law. Possessing only this limited authority, it could not be said that the defendant, in imposing and levying a fine on the plaintiff, a man known to him to be beyond his jurisdiction and having no notice of his proceedings, in good faith believed himself to have jurisdiction within the meaning of Act XVIII. of 1850. Though there was evidence to show that the defendant in some sense believed himself to have jurisdiction, and if the question had arisen whether he was entitled to notice of action under § 214 of Act VI. of 1863, and to such protection as is given by that and other Acts to persons who honestly intend to put the law in force in execution of their office, he might have been so entitled, such provisions being liberally construed for the protection of honest persons who thoughtlessly overstep the limits of the law, and who in such cases, even though there may be no reasonable cause for the belief, yet, if the belief in fact exists, may claim the protection which the law gives in the shape of notice of action, &c.,—yet a belief of this sort is not enough to exempt a person from responsibility for his illegal acts.

The *bonâ fide* belief which Act XVIII. of 1850 requires in those whom it protects from liability to suit in respect of acts done without jurisdiction is of a different kind. A belief based on no probable or plausible grounds, and arrived at inconsiderately and without due inquiry, cannot be considered a belief in good faith within the meaning of the Act, which requires reasonable care and attention in the performance of his official duty on the part of him who does or orders the act complained of. The error, whether it be one of law or fact, must, to be protected or excused, be shown to rest on some foundation of reason. The defence of the defendant, therefore, founded on Act XVIII. of

ACT XVIII. OF 1850—*contd.*

1850, failed. COLLECTOR OF SEA CUSTOMS, MADRAS *v.* PUNNIAR CHITHAMBARAM.....**I. L. Rep. 1 Mad. 89, 1876, F. B**

S. C. under **Jurisdiction. 13.**

And **Res Judicata. 81.**

ACT XXI. OF 1850—Loss of Caste.

See **Hindu Law—Disqualification to inherit. 7.**

And **Hindu Law—Maintenance of Widow. 12.**

HONAMMA *v.* TIMANABHAT...**I. L. Rep. 1 Bom. 559.**

—— Loss of Caste does not deprive Father of Right of Custody of Infant Daughter.

See **Loss of Caste.**

KANAKI RAM *v.* BIDDYA RAM... **I. L. Rep. 1 All. 549.**

ACT XXVI. OF 1850—Suit against Collector appointed Municipal Commissioner under—

See **Jurisdiction. 18.**

GANGADHAR *v.* COLLECTOR OF AHMEDNAGAR...**I. L. Rep. 1 Bom. 628.**

ACT XI. OF 1852.

See **Inam Commissioner's Decision.**

VASADEW *v.* RAMKRISHNA...**I. L. Rep. 2 Bom. 529.**

ACT XVIII. OF 1854.

See **Railway Act XVIII. of 1854.**

ACT XIII. OF 1855.

See **Negligence. 1.**

LYELL *v.* GANGA DAI...**I. L. Rep. 1 All. 60.**

ACT XXVIII. OF 1855—Hindu Law—*Dam-dupat*—Bengal Mofussil.

See **Interest. 4.**

DEEN DOYAL *v.* KYLAS...**I. L. Rep. 1 Cal. 92.**

—— Interest—*Dam-dupat*—Mortgage.

See **Assignment of Mortgage.**

GANPAT *v.* ADARJI.....**I. L. Rep. 3 Bom. 312.**

ACT XXXVII. OF 1855—§§ 2 and 4.

See **Jurisdiction. 11.**

SURDHAREE *v.* MANSOOR..**I. L. Rep. 3 Cal. 298.**

Digitized by Google

ACT XXI. OF 1856—§ 49.

See **Criminal Procedure Code, Act X. of 1872, § 222.**

EMPRESS *v.* BAIDANATH DAS...**I. L. Rep. 3 Cal. 366; 1 Cal. Rep. 442.**

ACT XXXV. OF 1858, § 9—*Act XIX. of 1873, §§ 194, 195—Lunatic—Appointment of Manager to Lunatic's Estate—Court of Wards.*] Section 9 of Act XXXV. of 1858, and § 195 of Act XIX. of 1873, do not render it imperative on the Court of Wards to take charge of the estate of a person adjudged by a Civil Court, under Act XXXV. of 1858, to be of unsound mind, but merely confer an authority on the Court of Wards to do so. Until the Court of Wards exercises that power the appointment by a Civil Court of a manager of a lunatic's property, under § 9 of Act XXXV. of 1858, is valid. Ordinarily, before appointing a manager in such cases, the District Judge should allow the Court of Wards an opportunity to declare its election, but in some cases it may be essential for the protection of the estate that a manager should be appointed at once, and if subsequently the Court of Wards assumed superintendence, the appointment made by the Judge would thereupon be annulled. MANOHAR LAL *v.* GAURI SHANKAR. *Stuart*, C. J., and *Turner*, J ... **I. L. Rep. 1 All. 476, 1877.**

ACT XL. OF 1858—Application of—to Hindus Resident and Domiciled in Calcutta.

See **Age of Majority.**

MOTHOORMOHUN *v.* SOORINDRO... **I. L. Rep. 1 Cal. 108.**

—— Sale by Guardian not appointed under.

See **Sale by Guardian.**

SOONDER NARRAIN *v.* BENNUD RAM....**I. L. Rep. 4 Cal. 76.**

—— § 18.

See the cases under **Alienation by Guardian.**

See **Mahomedan Law—Sale by Guardian.**

See **Mortgage 29. 30.**

ABHASSEE BEGUM *v.* MAHARANEE RAJROOP...**I. L. Rep. 4 Cal. 33.**

DEBI DUTT SAHOO *v.* SUBOODRA BIBEE...**I. L. Rep. 2 Cal. 283.**

See **Review. 10.**

MADHO DAS *v.* RUKMAN SEVAH SINGH ..**I. L. Rep. 2 All. 287.**

ACT VIII. OF 1859.

See **Civil Procedure Code, Act VIII. of 1859.**

ACT IX. OF 1859—§ 20—*Confiscation—Suit to recover Property Confiscated—Limitation.*] *A.* died the ostensible owner of certain lands, leaving two sons under age. Upon *A.*'s death, after local inquires made on the petition of *A.*'s widow praying that she and her sons might be recorded in the Government registers as the heirs of the deceased, *B.*'s name was entered on the Government register as owner of the property, and *B.* remained in possession thereof until 1858, when he was convicted and executed as a rebel, and the property was confiscated by Government as belonging to him.

The sons of *A.*, more than a year after the younger came of age, and more than a year after the passing of Act IX. of 1859, sued for the recovery of the lands, which had been granted by Government to the respondent after the confiscation:—

Held, that § 20 of Act IX. of 1859, which provides that no suit shall be brought by any party in respect to property confiscated, unless it be instituted within one year from the date of attachment or seizure of the property, was a clause of a general nature, applicable to all Courts, and not confined to the special Court created by Act IX. of 1859, and though the clause appeared under the form of a proviso, yet it was a limitation intended by the Legislature to apply to all suits brought by any person in respect of forfeited property, and there being no saving with respect to parties under disabilities, the Court could not introduce one, or import the clauses in the General Statute Act XIV. of 1859 relating to disabilities, and that the suit was, therefore, barred by limitation. MOHUMMUD BUHADOOR KHAN *v.* THE COLLECTOR OF BAREILLY... **L. Rep. 1 I. A. 167, 1874; 10 Beng. L. R. 292; 21 W. R. 319.**

ACT X. OF 1859—§§ 5 and 6.

See **Enhancement of Rent. 4.**

HANUMAN *v.* KAULESAR.....**I. L. Rep. 1 All. 301.**

—— § 15.

See **Enhancement of Rent. 3.**

MEER MAHOMED HOSSEN *v.* FORBES...**L. Rep. 2 I. A. 1.**

Digitized by Google

ACT X. OF 1859—*contd.*

—— § 23, Cl. 2—"Illegal Exaction of Rent."

See **Small Cause Court—Mofussil. 6.**

KRISHNA *v.* BIRESHUR.....**I. L. Rep. 4 Cal. 595.**

—— §§ 23 and 24—Jurisdiction of Civil and Revenue Courts.

See **Jurisdiction. 2.**

KUMOOD *v.* PURNA...**I. L. Rep. 4 Cal. 547.**

—— § 105.

See **Putnee Talook.**

BRINDABAN SIRCAR CHOWDRY *v.* BRINDABAN DEY CHOWDRY... **L. Rep. 1 I. A. 178.**

ACT XI. OF 1859 (BENGAL)—REVENUE—SALE LAW—§ 5—*Estate under Attachment of Civil Court—Notice.*] Where an estate or share in an estate, not severed for the purposes of revenue, is under attachment by order of a Civil Court in execution of a decree, such estate or share cannot, under § 5 of Act XI. of 1859, be sold for arrears of Revenue without the notice required by that Act.

The words "arrears of estates under attachment" are not confined to estates the whole of which is under attachment. The appointment of a *Surbarakur* or manager by a Court does not supersede an attachment. BANWAREE LALL SAHOO *v.* MOHABEER PROSHAD SINGH...**L. Rep. 1 I. A. 89, 1873; 12 Beng. L. R. 296.**

—— § 33—Sale for arrears of Revenue fraudulently effected by Co-Sharer.

See **Sale for Arrears of Revenue. 2.**

BHOOBUN CHUNDER *v.* RAM SOONDER...**I. L. Rep. 3 Cal. 300.**

—— § 37—Right of Purchaser at Revenue Sale to Enhance Rent—Presumption in favour of *Mokurari* Tenures.

See **Enhancement of Rent. 1.**

PARMANUND *v.* ROOKINEE...**I. L. Rep. 4 Cal. 793.**

—— § 37, Exception 4.

See **Sale for Arrears of Revenue. 1.**

BAGHO BIBEE *v.* RAM KANT... **I. L. Rep. 3 Cal. 293.**

—— § 53—*Sale for Arrears of Revenue—Unrecorded Co-Partner, Purchase by—Encumbrances.*] *A.* in November 1862 purchased a portion of an estate sold in execution of a decree against the then proprietor. Default occurred in the payment of the Government revenue on the 19th January 1863, and the entire estate was put up for sale by the Collector, and purchased by *A.* on the 29th March 1863.

Held, that *A.*, when he bid for the property at the revenue sale, *viz.*, in March 1863, was at that time, by virtue of the sale which had been finally confirmed in execution of the decree, owner of the rights of one of the co-sharers in the estate, *i.e.*, a co-partner; and in virtue of such co-partnership, though the sale certificate was not in his hand, he might, if he chose on or before the 19th January 1863, have paid in the amount of revenue due on that date. The case, therefore, came within the provisions of § 53 of Act XI. of 1859, and the plaintiff was a person who was an unrecorded co-partner in an estate, and who purchased in March, though the purchase related back to January, the estate of which he was co-partner. That being so, he took the estate subject to all its encumbrances existing at the date of sale, and did not acquire any rights in respect to under-tenants or ryots which were not possessed by the previous proprietor at the time of the sale in execution. ABDOOL BARI *v.* RAMDASS CONDOO. *Jackson* and *Tottenham*, JJ...**I. L. Rep. 4 Cal. 607; 3 Cal. Rep. 228, 1878.**

ACT XIII. OF 1859—*Contract to supply Labour.*] A contract to supply a certain number of coolies and keep that number at work on a plantation for at least three months, though the nature and extent of the work to be performed are not clearly specified, falls within the provisions of Act XIII. of 1859. ROWSON *v.* HANAMA MESTRI. *Morgan*, C.J, and *Innes*, J... **I. L. Rep. 1 Mad. 280, 1877.**

ACT XIV. OF 1859.

See **Limitation Act XIV. of 1859.**

ACT XXVII. OF 1860.

See the cases under **Certificate to collect Debts.**

—— Appeal from Order to deposit Security.

See **Appeal—Civil. 4.**

MONMOHINEE *v.* KHETTER GOPAUL...**I. L. Rep. 1 Cal. 127.**

Digitized by Google

ACT XXVII. OF 1860—*contd.*

—— Application for Certificate to collect Debts due to Estate of Intestate, dead 40 years before—Question of Title.

See **Certificate to collect Debts. 3.**

MOONJ BEHARY *v.* GOCOOL CHUNDER...**I. L. Rep. 3 Cal. 616.**

—— Application by Heir of Decree-holder for Execution—Certificate unnecessary.

See **Civil Procedure Code, Act VIII. of 1859, § 208.**

KARAM ALI *v.* HALIMA...**I. L. Rep. 1 All. 686.**

—— Mohunt—Private Estate of—Certificate.

See **Certificate to collect Debts. 4.**

DUKHARAM *v.* LUCHMUN...**I. L. Rep. 4 Cal. 954; 6 Cal. Rep. 49.**

—— Review.

See **Appeal—Civil. 16.**

RUKMIN...**I. L. Rep. 1 All. 287.**

—— Review of Proceedings under—admissible.

See **Review. 4.**

POONA KOOER...**I. L. Rep. 1 Cal. 101.**

—— Security—Appeal.

Soe **Appeal—Civil. 16.**

RUKMIN...**I. L. Rep. 1 All. 287.**

—— § 2—Representative of Assignee by devise of Debt, cannot sue to recover it without taking out Probate, or obtaining Certificate under Act XXVII. of 1860.

See **Assignee of Debt.**

SHODONE *v.* HALALKHORE...**I. L. Rep. 4 Cal. 645; 3 Cal. Rep. 462.**

—— § 2—*Claims against Trustees or Executors.*] "It appears to me that § 2 of Act XXVII. of 1860 applies to debts, and not to claims against executors or trustees. At all events it does not apply to claims for immoveable property." *Per Pontifex*, J.....**I. L. Rep. 2 Cal. 45. 54.**

—— § 6—Appeal.

See **Appeal—Civil. 4.**

MONMOHINEE *v.* KHETTER GOPAUL...**I. L. Rep. 1 Cal. 127.**

—— § 6—Appeal.

See **Appeal—Civil. 1.**

TARINI CHURN *v.* BAMASOONDUREE. **I. L. Rep. 1 Cal. 128, n.**

ACT XXVIII. OF 1860—*Power of Government to extend Time for Appeal.*] The proviso contained in § 25 of Act XXVIII. of 1860, gives a discretionary power to the Government of extending the time for appeal by suit at all times, even after the expiry of the period limited. KRISHNAREDDI GOVINDAREDDI *v.* STUART. *Morgan*, C.J., and *Innes*, J...**I. L. Rep. 1 Mad. 192, 1877.**

ACT XXXI. OF 1860—§ 32, Cl. 6—*Imprisonment—Sentence—Construction of Statute—Penal Statute.*] A sentence of fine only, or of imprisonment only, under Act XXXI. of 1860, § 32, Cl. 6, is legal. A penal statute, when its language is ambiguous, must be construed in the manner most favourable to the liberties of the subject, and this is more especially so when the penal enactment is of an exceptional character. REG. *v.* BHISTA MADANNA...**I. L. Rep. 1 Bom. 308, 1876, F. B.**

ACT XLV. OF 1860.

See **Penal Code.**

ACT IX. OF 1861—§ 1—*Fresh Application—Previous Orders not exhaustive of Court's Power.*] A Court is not precluded from entertaining a fresh application for the appointment of a guardian of a minor, under § 1 of Act IX. of 1861, by the circumstance that a previous application of the same sort has been refused. NEHALO *v.* NAWAL. *Stuart*, C.J., and *Oldfield*, J.....**I. L. Rep. 1 All. 428, 1877.**

ACT XXIII. OF 1861—§ 4—Dwelling—Residence.

See **Jurisdiction. 3.**

FATIMA BEGAM *v.* SAKINA BEGAM. **I. L. Rep. 1 All. 51.**

—— § 4—Suit against Drawer and Acceptor of *Hundi*, residing within Jurisdiction of different Courts—Bankruptcy of Acceptor.

See **Procedure—Civil.**

BASANT RAM *v.* KOLAHAL...**I. L. Rep. 1 All. 392.**

—— § 11—Order cancelling Auction Sale in Execution.

See **Civil Procedure Code, Act VIII. of 1859, §§ 256, 257.**

SUKHAI *v.* DARYAI...**I. L. Rep. 1 All. 374.**

Digitized by Google

ACT XXIII. OF 1861—*contd.*

—— § 11—Execution of Decree—Mesne Profits and Interest subsequent to Decree not provided for in Decree—Security to pay—pending Appeal—Estoppel.

See **Mesne Profits. 1.**

SADASIVA *v.* RAMALINGA.....**L. Rep. 2 I. A. 219; 15 Beng. L. R. 382; 24 W. R. 192.**

—— § 11—Execution of Decree — Question of Legitimacy of son of Decree-holder decided in—Act VIII. of 1859, § 208—Jurisdiction.

See **Execution of Decree. 9.**

ABEEDOONISSA *v.* AMEEROONISSA. **L. Rep. 4 I. A. 66; I. L. Rep. 2 Cal. 327.**

—— § 11 — Mesne Profits Misappropriated — Suit for.

See **Mesne Profits. 5.**

SURNOMOYEE *v.* PATTARRI SIRKAR. **I. L. Rep. 4 Cal. 625.**

—— § 11 —Mesne Profits Obtained during Possession under Decree Reversed on Appeal —Restitution.

See **Mesne Profits. 2.**

LATI KOOER *v.* SOBADRA KOOER... **I. L. Rep. 3 Cal. 720.**

—— § 11—Party to Suit—Purchaser of Decree.

See **Appeal—Civil. 9.**

RUNJIT SINGH *v.* MEHERBAN KOER...**I. L. Rep. 3 Cal. 662.**

—— § 11—*Application for Execution of Decree —Act VIII. of* 1859, §§ 208 *and* 364—*Right of Appeal.*] The applicant alleging herself to be the purchaser of a certain decree, applied under § 208 of Act VIII. of 1859 to the Subordinate Judge of Dacca to be placed on the record as decree-holder, and for execution of the decree. It appeared that the decree had been purchased *benami* for some persons not on the record, and it was in dispute as to who was the real purchaser of the decree. The Subordinate Judge rejected the application. On appeal to the High Court:—

Held, that the applicant was not a party to the suit within the meaning of Act XXIII. of 1861, § 11, and that no appeal lay.

ACT XXIII. OF 1861—*contd.*

An alleged transferee of a decree by merely applying for execution of the decree does not constitute himself a party to the suit. In no sense is an applicant who applies to be put on the record on the ground that he has acquired a title to the decree by transfer, a party to the suit unless his application is actually granted. The doctrine laid down in *Hurro Lall Das* v. *Soojawut Ali* (8 W. R. 197), if not to be taken to be overruled by the decision of the Privy Council in *Abidunnissa Khatoon* v. *Ammirunnissa Khatoon* (L. Rep. 4 I. A. 66, S. C. I. L. Rep. 2 Cal. 327), must at least be considered as confined to cases in which there is no dispute as to the assignment of the decree having taken place, or as to the person who is the assignee. Section 208 of Act VIII. of 1859 does not apply to cases where there is a contest with respect to the rights of persons to an equitable interest in a decree. Where such contest exists, a party claiming to be the assignee of the decree would not be entitled to succeed in an application for execution made under that section, and for the same reason would not be entitled to be made a party to the suit. In no sense, therefore, could he be considered as coming within the meaning of § 11 of Act XXIII. of 1861. No appeal lies from any judgment or decision given in a proceeding under § 208 of Act VIII. of 1859. SOBHA BIBEE *v.* MIRZA SAKHAMUT ALI. *White* and *Mitter*, JJ...**I. L. Rep. 3 Cal. 371; 1 Cal. Rep. 331, 1878.**

2. —— § 11—*Excess Payment made by Mistake in Execution of Decree—Suit to recover—Jurisdiction—Small Cause Court.*] The plaintiff sued the defendant to recover a sum realized by the defendant in excess of the decree against the plaintiff which the defendant had executed in the Small Cause Court; the cause of action alleged in the plaint being the discovery by the plaintiff of the mistake he had made in paying interest not provided for in the decree:—

Held by *Pearson*, J., that the suit was barred by the provisions of § 11 of Act XXIII. of 1861.

By *Stuart*, C.J., the provisions of § 11 of Act XXIII. of 1861, should be confined to matters within the limits of, and not outside the decree, and money paid in excess of the amount decreed is a matter outside the decree. To recover such an excess, being money improperly, erroneously and illegally obtained under the guise of the

Digitized by Google

ACT XXIII. OF 1861—*contd.*

process of execution, and with regard to which no order could be made in the execution department, a suit will lie; and the claim in such a suit is in the nature of damages within the meaning of § 6 of Act XI. of 1865, and is cognizable by the Small Cause Court when the amount claimed is within the pecuniary limits of the jurisdiction of that Court. AGRA SAVINGS BANK *v.* SRI RAM MITTER...**I. L. Rep. 1 All. 388, 1877.**

—— § 14.

See **Pre-emption. 1. 2.**

FARZAND ALI *v.* ALIMULLAH...**I. L. Rep. 1 All. 272.**

NARAIN SINGH *v.* MUHAMMAD FARUCK...**I. L. Rep. 1 All. 277.**

—— § 16—Order sending Case to Magistrate for Inquiry into Charge of False Evidence.

See **Criminal Procedure Code, Act X. of 1872, § 471. 2.**

REG. *v.* BAIJOO LALL...**I. L. Rep. 1 Cal. 450.**

—— § 27—Special Appeal in Suits cognizable by a Court of Small Causes.

See the cases under **Small Cause Court—Mofussil.**

—— § 27—Suit Cognizable by Small Cause Court—Question of Title incidentally decided—No Special Appeal.

See **Appeal—Civil. 31.**

MOHESH MAHTO *v.* SHEIKH PIRU... **I. L. Rep. 2 Cal. 470.**

—— § 27—Suit Cognizable by Small Cause Court entertained, without Jurisdiction, by Civil Court within limits of a Small Court's Jurisdiction—Special Appeal lies.

See **Small Cause Court—Mofussil. 7.**

DYEBUKEE *v.* MUDHOO MUTTY... **I. L. Rep. 1 Cal. 123.**

—— § 27—Suit Cognizable by Small Cause Court—Superintendence of High Court.

See **Stat. 24 & 25 Vict., C. 104, § 15. 1.**

LUKHYKANT BOSE...**I. L. Rep. 1 Cal. 180.**

ACT XXIII. OF 1861—*contd.*

—— § 27—Suit for "*Huq-i-chaharum*" or other Zamindari Cesses.

See **Small Cause Court—Mofussil. 4.**

NANKU *v.* BOARD OF REVENUE... **L. Rep. 1 All. 444.**

—— § 27—*Special Appeal—Suit cognisable by a Small Cause Court,*] *Held*, that where a suit of a nature cognizable by a Small Cause Court was instituted before Act XLII. of 1860 came into force, and an order was made on regular appeal in execution of the decree in such suit after the passing of Act XXIII. of 1861, that the provisions of § 27 of Act XXIII. of 1861 applied, and that no special appeal would lie from such order. BICHUCK SINGH *v.* NAGESHAR NATH. *Turner* and *Oldfield*, JJ....**I. L. Rep. 2 All. 112, 1879.**

—— § 37.

See **Appellate Court—Powers of.**

DURGA PRASAD *v.* KHAIRATI... **I. L. Rep. 1 All. 545.**

—— § 38—Miscellaneous Proceedings—Execution of Decree.

See **Stay of Execution.**

HARSHANKAR...**I. L. Rep. 1 All. 178.**

See **Civil Procedure Code, Act VIII. of 1859, § 6.**

GYA PRASHAD *v.* BHUP SINGH... **I. L. Rep. 1 All. 180.**

—— § 38—Refusal to register—Review.

See **Review. 8.**

REEASUT HOSSEIN *v.* HADJEE ABDOOLLAH...**L. Rep. 3 I. A. 221; I. L. Rep. 2 Cal. 131.**

ACT XVIII. OF 1862.

See **Offence committed before the Penal Code came into operation.**

EMPRESS. *v.* DILJONO MISSER .. **I. L. Rep. 2 Cal. 224.**

EMPRESS *v.* MULNA...**I. L. Rep. 1 All. 599.**

—— §§ 26, 27.

See **Defamation.**

SIBHO PROSAD.....**I. L. Rep. 4 Cal. 124; 3 Cal. Rep. 122.**

Digitized by Google

ACT II. OF 1863—§ 1—Court of Highest Civil Jurisdiction.

See **Appeal to the Privy Council. 2.**

THAKOOR HARDEO BUX *v.* THAKOOR JAWAHIR SINGH...**L. Rep. 4 I. A. 178; I. L. Rep. 3 Cal. 522.**

ACT VI. OF 1863.

See **Jurisdiction. 18.**

COLLECTOR OF SEA CUSTOMS *v.* PUNNIAR CHITHAMBARAM...**I. L. Rep. 1 Mad. 89.**

—— § 24—Finality of Fine imposed by Collector—Jurisdiction.

See **Act XVIII. of 1850. 2.**

COLLECTOR OF SEA CUSTOMS *v.* PUNNIAR CHITHAMBARAM...**I. L. Rep. 1 Mad. 89.**

ACT XIX. OF 1863—§§ 8, 9—Determination of Title under—not appealed from, and become final, bars Civil Suit to adjudicate on same Title.

See **Res Judicata. 33.**

HARSAHAI MAL *v.* MAHARAJ SINGH. **I. L. Rep. 2 All. 924.**

ACT XX. OF 1863.

See **Criminal Breach of Trust.**

ANON .....**I. L. Rep. 1 Mad. 55.**

See **Suit for Management of a Religious Endowment.**

PANCHCOWRIE MULL *v.* CHUMROOLALL ..**I. L. Rep. 3 Cal. 563.**

—— *Suit against persons intruding into Management of Temple.*] The special sections of Act XX. of 1863 as to suits, deal only with the trustees, managers, superintendents, and committees of temples for acts by them, while filling the office of trustee, manager, superintendent or committee, and do not apply to persons who without any authority, by election, appointment, or otherwise, have intruded themselves into the management of a temple and possession of its properties. SABAPATHI *v.* SUBRAYA. *Kernan* and *M. Ayyar*, JJ...**I. L. Rep. 2 Mad. 58, 1878.**

ACT VI. OF 1864.

See **Whipping Act VI. of 1864.**

ACT XI. OF 1864—Appointment of Kazi.

See **Kazi. 1. 2.**

JAMAL *v.* JAMAL...**I. L. Rep. 1 Bom. 633.**

DAUDSHA *v.* ISMALSHA...**I. L. Rep. 3 Bom. 72.**

ACT XX. OF 1864.

See **Bombay Minors' Act XX. of 1864.**

ACT XXVI. OF 1864—§ 2.

See **Small Cause Court—Presidency Town. 8.**

WALJI KARIMJI *v.* JAGGANATH PREMJI...**I. L. Rep. 2 Bom. 84.**

ACT III. OF 1865—Carriers—Common Law Liability—Contract Act IX. of 1872, §§ 151, 152.

See **Railway Company. 2.**

KUVERJI *v.* THE G. I. P. RY. CO... **I. L. Rep. 3 Bom. 109.**

—— § 9—*Onus Probandi* of Negligence.

See **Railway Company. 3.**

ISHWARDAS *v.* THE G. I. P. RY. Co. ..... **I. L. Rep. 3 Bom. 120.**

ACT X. OF 1865.

See **Indian Succession Act X. of 1865.**

ACT XI. OF 1865—§ 6—Contract—Suit for a Balance of Account—Jurisdiction.

See **Small Cause Court—Mofussil. 7.**

DYEBUKEE *v.* MUDHOO MUTTY...**I. L. Rep. 1 Cal. 123.**

—— § 6, Cl. 4.

See **Small Cause Court—Mofussil. 6.**

KRISHNA *v.* BIRESHUR.....**I. L. Rep. 4 Cal. 595; 3 Cal. Rep. 177.**

—— § 12—Suit by Defeated Claimant under § 283, Act. X. of 1877, to recover Moveable Property attached in Execution of Decree of Small Cause Court.

See **Civil Procedure Code, Act X. of 1877, § 283.**

GORDHAN PANA *v.* KASANDAS BALMUKANDAS...**I. L. Rep. 3 Bom. 179.**

—— § 20.

See **Execution of Decree. 22.**

GOPAL *v.* NANKU...**I. L. Rep. 1 All. 624.**

—— § 21.

See **Judgement ex parte. 1.**

DAYAL *v.* KUPPOOR...**I. L. Rep. 4 Cal. 318; 3 Cal. Rep. 482.**

Digitized by Google

ACT XI. OF 1865—*contd.*

—— § 51.

See **Execution of Decree. 22.**

GOPAL *v.* NANKU...**I. L. Rep. 1 All. 624.**

—— § 51.

See **Principal and Surety. 1.**

CROSTHWAITE *v.* HAMILTON... **I. L. Rep. 1 All. 87.**

ACT XX. OF 1865—§ 37—Pleader's Fee—Pre-emption Suit—Costs as between Party and Party.

See **Pleader's Fees.**

DEBI SINGH *v.* BHUP SINGH...**I. L. Rep. 1 All. 709.**

ACT XXI OF 1865—§ 5—*Parsi Succession—Childless Widow of predeceased Son of a Parsi.*] It is not a condition precedent to the application of § 5 of Act XXI. of 1865 that the predeceased son of a Parsi intestate shall have left both a widow and issue. Where an intestate Parsi left him surviving a widow, sons, daughters, children of a predeceased son, and the widow of another predeceased son who had died without issue, and a posthumous daughter was afterwards born to the intestate: *Held*, that such last-mentioned widow was entitled to one moiety of the share in the intestate's estate which her husband would have taken had he survived the intestate, and that the other moiety of such share devolved on the surviving issue of the intestate, including the posthumous daughter, and the children of his other predeceased son. MANCHARJI K. DAVAR *v.* MITHIBAI. *Green*, J....**I. L. Rep. 1 Bom. 506, 1876.**

—— § 8—*Parsis—Advancement.*] In excluding by § 8 of the Parsi Succession Act XXI. of 1865 from application to Parsis, of § 42 of the Indian Succession Act (X. of 1865), which repeals the English rule as to advancement contained in the Statute of Distributions, § 5, it was not the intention of the Legislature to preserve the last mentioned rule in force for the Parsi community. DANJIBHAI B. GUJRAT *v.* NAVAZBAI. *Green*, J... **I. L. Rep. 2 Bom. 75, 1877.**

S. C. under **Administration. 2.**

ACT V. OF 1866—*Suit on Promissory Note Payable by Instalments.*] Act V. of 1866 was only intended to apply to those cases in which the bill itself, together with mere lapse of time, is sufficient to establish for the plaintiff a *primâ facie* right to recover. Therefore, where a promissory note payable by instalments, contained a proviso that on default in payment of the first instalment, the whole amount was to fall due: *Held*, that a suit to recover the whole amount on default made in payment of the first instalment could not be brought under Act V. of 1866, as in such a case the plaintiff is obliged to allege the occurrence of another fact besides the lapse of time since the making of the bill, *viz.*, that the first instalment has not been paid, of which fact there was no evidence before the Court, and the procedure of Act V. of 1866 was not intended to enable the plaintiff's statement of the fact in his petition to prevail without evidence, which could not be given under the Act. REMFREY *v.* SHILLINGFORD. *Phear*, J.....**I. L. Rep. 1 Cal. 130, 1876.**

ACT X. OF 1866.

See **Indian Companies' Act X. of 1866.**

ACT XX. OF 1866.

See **Registration Act XX. of 1866.**

ACT XXVI. OF 1866—*Sub-Settlement—"Holding under Contract"—Rules 2 and 3.*] Under-tenures held under contract or under any arrangements from which a contract may be inferred, are within the definition of sub-proprietary rights given in the rules annexed to Act XXVI. of 1866, and their holders are entitled to a sub-settlement. THE MAHARAJAH OF BULRAMPUR *v.* UMAN PAL SINGH...**L. Rep. 5 I. A. 225, 1878.**

ACT XXIV. OF 1867—§ 60.

See **Res Judicata. 21.**

SMITH *v.* SECRETARY OF STATE... **I. L. Rep. 3 Cal. 340.**

ACT I. OF 1868—§ 1, Cl. 13. The word "include" in Clause 13 and other clauses of § 1 of Act I. of 1868 is intended to be enumerative and not exhaustive. EMPRESS *v.* RAMAIYIYA. *Innes* and *Forbes*, JJ...**I. L. Rep. 2 Mad. 5, 1878.**

——§ 6.

See **Appeal—Civil. 9. 28.**

RUNJIT SINGH *v.* MEHERBAN KOER. **I. L. Rep. 3 Cal. 662.**

UDU BEGUM *v.* IMAM-UD-DIN...**I. L. Rep. 2 All. 74.**

Digitized by Google

ACT I. OF 1868—*contd.*

——§ 6.

See **Civil Procedure Code, Act X. of 1877, § 342.**

RATTANSI KALLIANJI...**I. L. Rep. 2 Bom. 148.**

—— § 6.

See **Offence committed before the Penal Code came into operation.**

EMPRESS *v.* DILJONO MISSER...**I. L. Rep. 2 Cal. 225.**

EMPRESS *v.* MULNA...**I. L. Rep. 1 All. 599.**

—— § 6—Execution of Decree—Appeal.

See **Appeal—Civil. 5.**

CHINTO JOSHI *v.* CHINTAMAN NARAYAN...**I. L. Rep. 3 Bom. 214.**

—— § 6—Execution of Decree—Proceedings instituted before Act X. of 1877 came into force—Appeal.

See **Appeal—Civil. 26.**

THAKUR PRASAD *v.* AHSAN ALI... **I. L. Rep. 1 All. 668.**

—— § 6—Execution of Decree—Rateable Division of Proceeds.

See **Execution of Decree. 7.**

NARANDASS *v.* BAI MANCHHA...**I. L. Rep. 3 Bom. 217.**

—— § 6—Refusal to register—Proceedings commenced under Act VIII. of 1871—Repeal of that Act by Act III. of 1877—Appeal.

See **Appeal—Civil. 10.**

SYUD MAHOMET HOSSEIN *v.* HADZI ABDULLAH...**I. L. Rep. 3 Cal. 727.**

—— § 6—*Registration.*] By virtue of § 6 of Act I. of 1868, a suit is to be governed by the Registration Law in force at the institution of the suit, and not by that which may be in force when it comes on for hearing. OGHRA SINGH *v.* ABLAKHI KOORR. *Mitter* and *Jackson*, JJ.....**I. L. Rep. 4 Cal. 536 ; 3 Cal. Rep. 435, 1878.**

S. C. under **Registration. 26.**

ACT I. OF 1869.

1. —— *Limitation of Suits in Oudh—Redemption of Mortgage*—Onus Probandi.] Under Act I. of 1869, a suit for redemption is not barred where the instrument of mortgage fixes a term within which the mortgage might be redeemed, and such term did not expire before the 13th of February 1856. In a suit for redemption, the mortgage deed, dated the 21st of July 1840, having been lost, the Judicial Commissioner held that the *onus* lay, not on the mortgagor to prove that the term did not expire before the 13th of February 1856, but on the mortgagee to prove that it did :—

Held by their Lordships, that the burden of proof was *primâ facie* on the mortgagor, regard being had as respects the *quantum* of evidence required, to the opportunities which each party may naturally be supposed to have of giving evidence. RAJAH KISHEN DUTT RAM PANDAY *v.* NARRENDAR BAHADOOR SINGH...**L. Rep. 3 I. A. 85.**

2. —— *Oudh Estates' Act—Summary Settlement—Registered Talukdar may be Trustee—Reformation of Sunnud*—Malikana.] In a suit against the respondent, pending the regular settlement of Taluk *Sersendre*, to establish plaintiff's right to a direct settlement with her of four villages, and of a one-third share of seven other out of the 26 villages of which the taluk was composed ; it appeared that the respondent had, before judgment, obtained a sunnud of the whole taluk, his name being entered in the second Schedule to Act I. of 1869, and further that he had admitted himself to be trustee for the plaintiff as regards the said one-third share of the seven villages. It also appeared that the plaintiff was entitled to a sub-settlement of the said four villages :—

Held, (1) that the plaintiff could not establish talukdari rights, for, having no interest in many of the villages, in order to make her a talukdar, it would be necessary, not only to reform the respondent's sunnud, but also to break up the existing settlement and to re-settle the estate in three different portions.

Quære, whether since the passing of Act I. of 1869 the sunnud could be reformed, even by the Governor-General in Council, without a special Act of the Legislature

(2.) The plaintiff could not, under the summary settlement and the Governor-General's order of the 10th of October 1859, acquire proprietary rights as against the respondent, who, before the summary settlement, was sole hereditary proprietor of the taluk, and whose rights were reserved under the Proclamation.

Digitized by Google

ACT I. OF 1869—*contd.*

(3.) The summary settlement not having been made with the plaintiff *as talukdar*, neither it nor the order of 1859 conferred talukdari rights upon her.

Held, lastly, that the plaintiff was entitled to a Hindu widow's estate of inheritance in the said four vallages, and in a one-third share in the profits of the said seven villages, and to have a settlement of the four villages on terms of paying to the talukdar the Government demand *plus* 10 per cent.

Quære, whether the effect of the letter of the 10th of October 1859 and the subsequent legislation is to relieve a Hindu widow, though a talukdar, from the disabilities imposed upon her by the general law. WIDOW OF SHUNKUR SAHAI *v.* RAJAH KASHI PERSAD... **L. Rep. 4 I. A. 198, n.; L. R. Sup. Vol. I. A. 220.**

3. —— *Summary Settlement with Talukdar dying before the Letter of 10th October 1859—Resumption of Taluk.*] In a suit brought in 1867 to establish plaintiff's right to a talukdari in Oudh, as grand-mother and heiress to a deceased infant Rajah with whom a summary and temporary settlement thereof had been made; it appeared that the taluk had been, after the death of the infant Rajah, and before the letter of the 10th of October 1859, resumed by the Government.

Held, that the plaintiff, as heir of a talukdar who had been permitted to engage for the revenue, but who had died before the letter of the 10th October 1859, was not entitled to the permanent hereditary and transferable proprietary right described thereby, but which had been vested in the deceased Rajah.

Act I. of 1869 did not apply to the case. RANEE OF CHILLOREE *v.* THE GOVERNMENT OF INDIA...**L. Rep. 4 I. A. 208; L. R. Sup. Vol. I. A. 237, 1873.**

4. —— *Right of Mortgagee prior to the confiscation to Sub-Settlement*—Malikana.] The former Rajah of Tulsipore, on the 4th of March 1856, a very few weeks after the first annexation of Oudh, borrowed from the plaintiff Rs. 7,001, and, as a security for that sum, executed to him an instrument in the nature of a mortgage by way of conditional sale of four villages "with all the four boundaries and *birt zemindary* rights for four villages." The instrument provided also that the plaintiff should be allowed

ACT I. OF 1869—*contd.*

"to take possession of the aforesaid villages, to pay the Government revenue, and to appropriate the surplus profits to his use in lieu of interest."

At the summary settlement which the British Government made on the first annexation of Oudh, the plaintiff applied to have the settlement of the four villages made directly with him. That settlement was not completed until the 4th of June 1857, and was made to endure only for the time during which the plaintiff would be in possession of the villages strictly in the character of mortgagee. The Rajah of Tulsipore having taken part in the mutiny of 1857, his estate was confiscated, and in 1859 created into a talook under the new system, in favour of the defendant, who was allowed to engage for the revenue as talookdar at the summary settlement for that year, which was completed on 25th of May 1859, and whose title had since been confirmed in the fullest manner by the Oudh Estates' Act I. of 1869. The plaintiff, who was in actual possession of the four villages as mortgagee, was dispossessed on the 31st of January 1859, in favour of the defendant, when, in anticipation of the final settlement, the latter was put into possession. While the settlement was in progress the plaintiff filed his suit against the defendant, the talookdar, at first (asserting proprietary right as mortgagee), for a direct settlement of a superior proprietary right, but subsequently for a sub-settlement of a sub-proprietary right in the four villages:—

Held, that upon the construction of the mortgage deed, and having regard to the intention of the parties, the transfer to the plaintiff was merely of a sub-proprietary right, and that the plaintiff was entitled to a sub-settlement of the four villages without prejudice to the right, if any, of the defendant to *Malikana* at a rate not less than 10 per cent., after the plaintiff's interest had been perfected by foreclosure. It is not essential to the enforcement of the right of one who would be a subordinate zemindar, that the talookdar should have some pecuniary interest in the sub-tenure, or that the zemindar should be bound to pay some substantial rent to his superior.

Quære, whether even if this mortgage did not confer a strictly sub-proprietary interest, a sub-settlement thereof would not have been justified, by the case of *The Widow of Shunkur Sahai* v. *Rajah Kashi Pershad* (L. Rep. 4 I. A. 198; L. R.

Digitized by Google

ACT I. OF 1869—*contd.*

Sup. Vol. I. A. 220). A plaintiff seeking by his plaint a direct settlement of a superior proprietary right may modify his claim to one of a sub-settlement of a sub-proprietary right. GOURI SHUNKUR *v.* MAHARAJAH OF BULRAMPORE.....**L. Rep. 6 I. A. 1, 1878; I. L. Rep. 4 Cal. 889.**

5.——*Talookdar—Joint Hindu Family—Implied Trust.*] In a suit brought in 1865 by some members of a joint Hindu family for a declaration of right against another member thereof, it appeared that although the defendant, being Kabooliatdar of a certain talook in Oudh on behalf of the joint family, had obtained in his own name a sunnud thereof, and of certain villages granted by Government as a reward for services rendered by the family during the Mutiny, yet that from his acts and declarations he must be deemed to have consented to hold the same in trust for the joint family, and as a joint estate subject to the law of the Mitakshara :—

Held, that Act I. of 1869, which was passed before the suit was decided by the Court of first instance, did not operate so as to change the relative conditions of the parties, and to put an end to the trust upon which the defendant had previously held the estate. The estate in his hands remained thereafter subject to the trust, and there can be no difference in this respect between an express trust, and a trust implied or presumed from a fair and reasonable interpretation of the acts and declarations of the defendant. THAKOOR HURDEO BUX *v.* THAKOOR JAWAHIR SINGH.....**L. Rep. 6 I. A. 161, 1879.**

6.——*Joint Hindu Family—Registered Talookdar may be a Trustee—Liability of Sunnudholder to account.*] In a suit brought by some members of a joint Hindu family for a declaration of right against another member thereof alleging that the defendant, being Kabooliatdar of a certain talook in Oudh on behalf of the joint family, obtained a sunnud in his own name, and intended to deprive the plaintiffs of their rights, notwithstanding an admission made by him that they were entitled to shares :—

Held, that a person who has been registered as a talookdar under Act I. of 1869, and has thereby acquired a talookdary right in the whole property, may, nevertheless, have made himself a trustee of a portion of the beneficial interest

ACT I. OF 1869—*contd.*

in lands comprised within the talook, and be liable to account accordingly.

Shunkur Sahai v. *Rajah Kashi Pershad* (L. Rep. 4 I. A. 198, note) approved.

Case remanded accordingly to try whether, notwithstanding the summary settlement, the sunnud and the statute, the plaintiffs, or either of them, had either before or after the passing of Act I. of 1869, acquired or become entitled to a beneficial interest in any part of the property. THAKOOR HURDEO BUX *v.* THAKOOR JAWAHIR SING...**L. Rep. 4 I. A. 178, 1877; I. L. Rep. 3 Cal. 522.**

S. C. under **Judge, and Appeal to the Privy Council. 2.**

7.——*Estate in Oudh—Title under Sunnud from Government—Trust.*] Although a sanad granted by the Government of India, subsequent to the proclamation of the 15th of March 1858, of an estate in Oudh, confers an absolute title, and one which overrides all other titles, yet the grantee under Government may, by an express declaration of trust, or by an agreement to hold in trust, constitute himself a trustee of the estate for a third party.

Where the lower Courts, on the ground that the defendant's title under the sanad was absolute, declined to consider evidence which the plaintiff relied on as showing that the defendant really held for him as trustee, the case was remanded by the Judicial Committee in order that such evidence might be received and considered. THAKUR SHERE BAHADUR *v.* THAKURAIN DARIAO KUAR...**I. L. Rep. 3 Cal. 645, 1877; P. C.**

—— § 2—Will.

See **Oudh Proclamation of 1858, para. 8.**

HURPURSHAD *v.* SHEO DYAL...**L. Rep. 3 I. A. 259.**

—— § 3, Cl. 4—Condition.

See **Act I. of 1869, § 22, Cl. 11.**

BRIJ INDAR *v.* RANEE JANKI...**L. Rep. 5; I. A. 1 Cal. Rep. 318.**

—— §§ 3 and 4—Summary Settlement with, and Talukdari Sunnud to, Member of Undivided Hindu Family.

See **Oudh Proclamation of 1858. para. 8.**

HURPURSHAD *v.* SHEO DYAL...**L. Rep. 3. I. A. 259.**

Digitized by Google

ACT I. OF 1869—*contd.*

—— §§ 16 to 19—Not retrospective.

See **Oudh Proclamation of 1858, para. 8.**

HURPURSHAD *v.* SHEO DYAL...**L. Rep. 3. I. A. 259.**

—— § 22—Cl. 4. *Son of Talukdar's Daughter "treated by him in all respects as his own son"—Parol Revocation of Hindu Will.*] Clause 4 of § 22 of Act I. of 1869, must be construed irrespectively of the spiritual and legal consequences of an adoption under the Hindu law. Whenever it is shown by sufficient evidence that a talukdar, not having male issue, has so exceptionally treated the son of a daughter as to give him in the family the place, consequence, and pre-eminence which would naturally belong to a son, if one existed, and would not ordinarily be conceded to a daughter's son, and has thus indicated an intention that the person so treated shall be his successor, such person will be brought within that enactment. The will of a Hindu may be revoked by parol; and definitive verbal authority given to another by a Hindu testator, to destroy his will, constitutes a revocation thereof, although the instrument be not in fact destroyed.

Semble, a declaration made by such testator to the principal officer of the district in whose custody the will was, of his desire and intention that a particular person should succeed him by virtue of a newly-passed statute (Act I. of 1869), and in supersession of his will, would be in law a sufficient parol revocation of the will. MAHARAJAH PERTAB NARAIN SINGH *v.* MAHARANEE SUBHAO KOOER...**L. Rep. 4 I. A. 228, 1877; S. C. I. L. Rep. 3 Cal. 626.**

—— § 22, Cl. 11—*Oudh Taluka—Sunnud to Widow and her Heirs—Separate Property of Widow.*] A sunnud of a taluka in Oudh, which had been previously confiscated by Government, was granted, with full powers of alienation, to the widow of the last owner, a Hindu (but without mentioning her *status* as widow either in the operative words or in describing her), and to her heirs for ever, her name being entered in the first and second lists under Act I. of 1869, § 8, one condition of the grant being expressed to be that, in the event of her dying intestate, or any of her successors dying intestate, the estate should descend to the nearest male heir, according to the rule of primogeniture:—

ACT I. OF 1869—*contd.*

Held, in suits against the widow's daughter by persons claiming as male heirs to the widow's husband, that the sunnud conferred, and was intended to confer, a full proprietary and transferable right in the estate upon the widow and her male heirs according to the law of primogeniture, and not merely to confer upon her an estate for life with full power of alienation, and with remainder to the male heirs of her husband in the event of her dying intestate without having alienated it in her lifetime, and by virtue of § 3 of Act I. of 1869, she acquired by the sunnud a permanent and heritable right in the estate, nor was any trust created by the sunnud, or Act I. of 1869, or, on the evidence, in any other manner, for the benefit of the reversionary heirs of her husband.

Held also, that as regards succession, the limitation in the sunnud was wholly superseded by Act I. of 1869, and that the rights of parties claiming by descent must be governed by the provisions of § 22 of that Act, the positive limitations in which are not in any way controlled by the provisions in § 3 of the Act, to the effect that the right acquired by virtue of the talukdari sunnud should be subject to all the conditions affecting the talukdar contained in the sunnud, under which the estate is held. The conditions referred to in Cl. 4 of that section, are the conditions of loyalty and good service mentioned in the letter of the 19th October 1859, republished in the first schedule of the Act, and the other conditions of a similar nature such as those of surrendering arms, &c., contained in the sunnud.

Held also, that the above taluka was, at the time of her death, the property (*stridhan*) of the widow, and under § 22, Cl. 11, of Act I. of 1869, descended, in the absence of any proved custom of her tribe to the contrary, to her daughter in preference to the son of a daughter of a rival widow, and the remote heirs of her husband. BRIJ INDAR BAHADUR SINGH *v.* RANEE JANKI KOER...**L. Rep. 5 I. A. 1; 1 Cal. Rep. 318, 1877.**

ACT V. OF 1869—§§ 170, 171.

See **Offence committed at Cyprus.**

EMPRESS *v.* SARMUKH SINGH...**I. L. Rep. 2 All. 218.**

ACT XVIII. OF 1869.

See **Stamp Act XVIII. of 1869.**

Digitized by Google

ACT XXII. OF 1869.

See **Legislative Power of the Governor General in Council. 1. 2.**

EMPRESS *v.* BURAH...**I. L. Rep. 3 Cal. 63; I. L. Rep. 4 Cal. 172; L. Rep. 5 I. A. 178; L. Rep. 3 App. Ca. 889.**

ACT VII. OF 1870.

See **Court Fees Act VII. of 1870.**

ACT X. OF 1870.

See **Land Acquisition Act X. of 1870.**

ACT XXIV. OF 1870.

See **Oudh Talukdar's Relief Act XXIV. of 1870.**

ACT XXVI. OF 1870.

See **Prisons' Act XXVI. of 1870.**

ACT VI. OF 1871—§ 24—Hindu Law—Interest.

See **Interest. 4.**

DEEN DOYAL *v.* KYLAS...**I. L. Rep. 1 Cal. 92.**

—— § 24—Presumption of Death of Missing Person.

See **Evidence. 21.**

PARMESHWER RAI *v.* BISHESHAR SINGH...**I. L. Rep. 1 All. 53.**

ACT VIII. OF 1871.

See **Registration Act VIII. of 1871.**

ACT IX. OF 1871.

See **Limitation Act IX. of 1871.**

ACT X. OF 1871—Chapter VI.

See the cases under **Illicit Sale of Liquors.**

—— § 62.

See the cases under **Illicit Sale of Liquors.**

ACT XXIII. OF 1871.

See **Pensions Act XXIII. of 1871.**

ACT XXV. OF 1871—§ 2.

See **Railway Company. 4.**

PRATAB DAJI *v.* THE B. B. & C. I. RY. CO...**I. L. Rep. 1 Bom. 52.**

ACT XXXII. OF 1871.

See **Oudh Civil Courts' Act XXXII. OF 1871.**

ACT I. OF 1872.

See **Evidence Act I. of 1872.**

ACT IX. OF 1872.

See **Contract Act IX. of 1872.**

ACT X. OF 1872.

See **Criminal Procedure Code, Act X. of 1872.**

ACT XI. OF 1872—§§ 3 and 9—Native State—Cyprus.

See **Offence committed at Cyprus.**

EMPRESS *v.* SARMUKH SINGH...**I. L. Rep. 2 All. 218.**

ACT VIII. OF 1873—§ 70—Imprisonment in Default of Payment of Fine.

See **Criminal Procedure Code, Act X. of 1872, § 309. 2.**

EMPRESS *v.* DARBA...**I. L. Rep. 1 All. 461.**

ACT XV. OF 1873. 1 §§ 28 and 43—*Local Government—Notice of Suit—Special Appeal.*] Where in a suit against a Municipal Committee, the Magistrate of the District, who was also the Collector, was impleaded as representing the local Government, the High Court, assuming that such a plea would be valid in special appeal, refused to allow the plea that the Local Government had not been made a party to the suit, in accordance with the provisons of § 28 of Act XV. of 1873. But the Court expressed no opinion whether such a plea would be a valid plea in special appeal.

The notice of action required by § 43 of Act XV. of 1873 previous to suing a Municipal Committee is only necessary when the suit is brought for tort or *quasi* tort where damages are claimed for the thing done.

The plea that no notice was given, as required by § 43, cannot be taken for the first time in special appeal. THE MUNICIPAL COMMITTEE OF MORADABAD *v.* CHATRI SINGH. *Turner* and *Oldfield*, JJ.....**I. L. Rep. 1 All. 269, 1876.**

—— § 43—*Suit against Municipality—Substitution of President for Secretary as Defendant—Limitation Act XV. of 1877, § 22—Amendment.*] The plaintiff, after giving, in the office of the Municipal Committee, the notice required by

Digitized by Google

ACT XV. OF 1873—*contd.*

§ 43 of Act XV. of 1873, instituted a suit against the Municipal Committee in the name of their Secretary, claiming a declaration of his right to re-erect certain buildings which the Municipality had ordered to be removed, and compensation for their removal. The suit was instituted within three months from the accrual of the plaintiff's cause of action; but after the expiration of more than three months after that time, the plaintiff applied to the Court to substitute the name of the President of the Municipal Committee for that of the Secretary, as defendant. The application was refused, and the suit dismissed on the ground that it should have been instituted against the President and not the Secretary, and that even if the President had been substituted as defendant on the date of the plaintiff's application in that behalf, the suit would not have been maintainable, having regard to § 43 of Act XV. of 1873, and § 22 of Act XV. of 1877, as it would have been brought more than three months after the accrual of the cause of action :—

Held, that if § 43 of Act XV of 1873 applied, and notice to the Committee was necessary, such notice had been given, and the requirements of the Act substantially complied with; the error in making the Secretary, instead of the President, the defendant, being one of form only, and, therefore, that the substitution of the name of the President for that of the Secretary should have been made, and that such substitution was not affected by § 22 of Act XV. of 1877,—the suit against the Committee having been practically instituted within three months of the accrual of the cause of action, and § 22 of Act XV. of 1877, applying to cases where new plaintiffs and defendants personally, are made parties to a suit after its institution, and not to cases like the present, where the Committee was sued through their officer, and a clerical error was corrected by the Court, and the substitution as defendant of the proper officer for the wrong one permitted.

But semble, that § 43 of Act XV. of 1873, contemplates suits claiming relief of a pecuniary character for some act done under the Act by the Committee, or any of their officers, or any other person acting under their directions, and for which damages could be recovered against them personally.

If, on the other hand, the suit was not one contemplated by Act XV. of 1873, it was not affected by § 43 of that Act, and would be in time if the name of the President were subsitituted for that of the Secretary. Either way the subsitution should have been made, and the case heard upon its merits. The case was accordingly remanded that this might be done. MANNI KASAUNDHAN *v.* CROOKE. *Stuart*, C.J., and *Spankie*, J...**I. L. Rep. 2 All. 296. 1871.**

ACT XVIII. OF 1873.

See **Arbitration. 1.**

GOSHAIN *v.* DURGA...**I. L. Rep. 2 All. 119.**

—— Limitation to Suits under—Exclusion of Time occupied in prosecuting Suits in Court without Jurisdiction.

See **Limitation. 39.**

TIMAL KUARI *v.* ABLAKH RAI... **I. L. Rep. 1 All. 254.**

—— § 3—Arrears of Grain Rent.

See **§ 931.**

TAJUDDIN *v.* RAM PRASHAD...**I. L. Rep. 1 All. 217.**

—— §§ 5 and 6.

See **Enhancement of Rent. 4.**

HANUMAN PARSHAD *v.* KAULESSAR PANDEY...**I. L. Rep. 1 All. 301.**

—— § 7—Sir *Land—Ex-Proprietary Tenant—Mortgage of Proprietary Rights in a* Mahal *followed by Sale—Ejectment — Jurisdiction — Mesne Profits.*] In a suit to eject the defendants as trespassers from certain *sir* lands, and for mesne profits, it appeared that the plaintiffs held possession of the share, which included the *sir* land, as conditional mortgagees. The *sir* land was sublet by them to a tenant. The rights in the share remaining in the mortgagors, the defendants, were sold at auction and purchased by the plaintiffs. The defendants, without giving notice to the plaintiffs of their intention to hold the *sir* land as tenants, and of their readiness to pay rent, ousted the plaintiffs' tenant :—

Held, that the suit, as brought, was cognizable by the Civil Courts.

Held also, that the plaintiffs, having by the auction sale acquired the mortgagors' rights, thenceforward retained possession in full proprietary right; and inasmuch as up to the time of the auction sale their possession of the *sir* as

Digitized by Google

ACT XVIII. OF 1873—*contd.*

mortgagees must be treated as the possession of the mortgagors, the defendants were entitled to contend that the *sir* was held by them at the time of the sale, and that after the sale, in virtue of the provisions of § 7 of Act XVIII. of 1873, they became entitled to a right of occupancy in the *sir* as tenants at favourable rates.

Their proper course, then, was to have given notice to the plaintiffs of their intention to avail themselves of the rights conferred upon them by Act XVIII. of 1873, and to enter on the lands, at the same time offering to pay such rent as might, having regard to the provisions of that Act, be properly payable by them. But though the defendants, having a right to the occupancy of the lands, could not be treated as trespassers, yet, they having entered and ousted the tenant without communicating with the plaintiffs or taking any steps to have the rent assessed, the plaintiffs were entitled to recover damages for the use and occupation of the land. BAKHAT RAM *v.* WAZIR ALI. *Turner* and *Spankie*, JJ. .....**I. L. Rep. 1 All. 448, 1877.**

—— § 7—**2.** *Ex-Proprietary Tenant*—Sir *Land—Mortgage of Proprietary Rights in a* Mahal.] Where a person mortgaged his proprietary rights in a *Mahal*, which rights consisted of certain lands occupied by him, covenanting to give the mortgagee possession for the purpose of cultivation and the payment of the Government revenue, and being at liberty to redeem the lands at any time at the end of the month of Jaith :—

Held, that the mortgagor could not resist a claim on the part of the mortgagee for possession of the lands, on the ground that he had a right of occupancy in the lands under § 7 of Act XVIII. of 1873, that section not being applicable, and contemplating something more than a mere temporary transfer of proprietary rights. BHAGWAN SINGH *v.* MURLI SINGH...**I. L. Rep. 1 All. 459.**

—— §§ 8 and 9.

See **Right of Occupancy. 2.**

ABLAKH RAI *v.* UDIT NARAIN RAI. **I. L. Rep. 1. All. 353.**

—— § 9—**1.** *Right of Occupancy—Tenant—Sale in Execution of Decree.*] Section 9 of Act XVIII. of 1873 does not prevent a landholder from causing the sale in execution of his own decree, of the occupancy right of his own judgment-debtor in land belonging to himself. UMRAO BEGAM *v.* THE LAND MORTGAGE BANK OF INDIA. *Pearson* and *Oldfield*, JJ...**I. L. Rep. 1 All. 547 ; Affirmed on Appeal I. L. Rep. 2 All. 451.**

See **Right of Occupancy. 2. 4.**

ABLAKH RAI *v.* UDIT N. RAI...**I. L. Rep. 1 All. 353.**

DWARKA NATH *v.* HURRISH CHUNDER.....**I. L. Rep. 4 Cal. 925.**

—— § 9—**2.** *Tenant at Fixed Rate—Ex-Proprietary Tenant—Occupancy Tenant—Inheritance to Rights of Occupancy.*] *Held*, that the proviso to the last clause of § 9 of Act XVIII. of 1873 refers only to the holdings of ex-proprietary, and occupancy-tenants, and not to tenants at fixed rates. BHAGWANTI *v.* RUDR MAN TIWARI...**I. L. Rep. 2 All. 145, 1879, F. B.**

—— § 14—Suit by Purchaser of Share in a *Mahal*, for Profits of Unassessed *Sir* Land.

See **Suit for Profits.**

MUHAMMAD ALI *v.* KALIAN SINGH. **I. L. Rep. 1. All. 659.**

—— § 93—§ 3—*Arrears of Rent*—Bhaoli—*Revenue Court—Civil Court—Jurisdiction.*] *Held* by *Stuart*, C.J., that when rent is payable in grain it is not competent for the landlord to sue in a Revenue Court for the equivalent in cash. The definition of rent in § 3 of Act XVIII. of 1873 does not mean that where the rent is a grain one it can be either claimed or recovered in money.

By § 93 of that Act, suits for "arrears of rent" are exclusively cognizable by the Revenue Court, but where the rent in arrear is a grain rent, suits for arrears of the grain rent to be made good not in grain, but in money, would only be exclusively triable by the Revenue Court, either by the claim for a money equivalent being allowable in them, or by the decree in them being made capable of being satisfied in money. The intention of the Legislature was to give every reasonable facility for the recovery of such arrears as are mentioned in § 93, and that intention may be assisted by holding that conversion into, or recovery in money, is such a reasonable facility, and that such recovery may be either made by a claim to that effect in the plaint, or by allowing the decree to be executed to the same effect.

Digitized by Google

ACT XVIII. OF 1873—*contd.*

By *Pearson*, J.—Where the rent is payable in grain only, the landlord is not entitled to sue in the Revenue Courts for the money equivalent of arrears of such rent that may have accrued, such a suit being one for damages for breach of the contract to pay the rent.

By *Turner*, J.—Suits for the money-value of arrears of a grain rent are not suits for rent but for damages or compensation for non-payment of rent. But such suits, though not strictly suits for rent, have for a very long period been so regarded and tried in the Revenue Court, to whose jurisdiction no objections have been made. Under these circumstances the rule *cursus curiæ lex curiæ* should be applied, and such suits, though not strictly suits for rent, should be regarded as embraced in that term in § 93 of Act XVIII. of 1873, and the large terms of the first paragraph of that section may fairly be read as prohibiting the Civil Court from entertaining such suits.

By *Spankie* and *Oldfield*, JJ.—A landlord is competent to sue in the Revenue Court for the money equivalent of arrears of a grain rent. TAJUDDIN KHAN *v.* RAM PARSHAD BHAGAT...**I. L. Rep. 1 All. 217, 1876.**

—— § 93—**2.** *Suit by Co-Sharer against Heir of Deceased* Lambardar, *for Profits—Jurisdiction of Civil and Revenue Courts.*] *Held* by *Pearson*, J., following *Ashraf-un-Nissa* v. *Umrao Begam*, (I. L. Rep. 1 All. 512, note,) that a suit by a co-sharer in an undivided *Mahal* against the heir of a deceased *Lambardar* for his share of profits collected by the *Lambardar* before his death is a suit cognizable, not by a Civil Court, but by a Court of Revenue.

Stuart, C. J., dissented from the ruling above quoted. BHIKHAN KHAN *v.* RATAN KUAR ... **I. L. Rep. 1 All. 512, 1877.**

S. C. under § **94**, *infra.*

—— § 93—**3.** *Appeal to Judge — Proprietary Right — Rent — Sub-Proprietor.*] Where the defendant pleaded, in answer to the plaintiff's suit for arrears of rent, that the defendant no longer held as tenant, but as sub-proprietor under a settlement made direct with the defendant, the Settlement Officer:—

Held, that the suit involved a question of proprietary right within the meaning of §§ 93 and 189 of Act XVIII. of 1873, and that an appeal lay to the Judge of the district, though the amount in suit was less than Rs. 100. BISHESHUR SINGH *v.* MUSAMAT SUGUNDHI. *Stuart*, C. J., and *Oldfield*, J...**I. L. Rep. 1 All. 366, 1877.**

ACT XVIII. OF 1873—*contd.*

—— § 93, Cl. h—*Suit for Profits—Interest.*] A Revenue Court is competent in a suit for profits, under Act XVIII. of 1873, § 93, Cl. *h*, to award interest on profits. TOTA RAM *v.* SHER SINGH. *Turner* and *Spankie*, JJ.....**I. L. Rep. 1 All. 261, 1876.**

—— § 94—*Limitation to Suit by Co-Sharer for Share of Profits.*] *Held* by *Pearson*, *Turner*, and *Oldfield*, JJ., that the share of a co-sharer in an undivided Mahal, of the profits of the Mahal for any agricultural year is due to him from the Lambardar as soon as, after the payment of Government revenue and village expenses, there is a divisible surplus in the hands of the Lambardar, unless by agreement or custom a date is fixed for taking the accounts and dividing the profits, in which case any divisible surplus which may have accrued prior to that date is due on that date, and the divisible profits in respect of any arrears which may be collected after that date are due when they reach the hands of the Lambardar or his agent.

By *Stuart*, C.J., and *Spankie*, J., that where by agreement or custom there is no date fixed for dividing such profits, the share of a co-sharer becomes due on the last day of the agricultural year, as fixed by Acts XVIII. and XIX. of 1873, *viz.*, the 30th of June. BHIKHAN KHAN *v.* RATAN KUAR...**I. L. Rep. 1 All. 512, 1877.**

S. C. under § **93**, *supra.*

—— § 95—Application for Restoration of Occupancy, based on particular Title—Denial of Title by Landholder—Decision by Revenue Court in Plaintiff's favour—Subsequent Suit by Landholder.

See **Res Judicata. 15.**

SHIMBU NARAIN SINGH *v.* BACHCHA...**I. L. Rep. 2 All. 200.**

—— § 95—*Jurisdiction—Revenue Court—Civil Court.*] *T.*, the occupancy tenant of certain lands, gave *K.* a lease of his occupancy rights for a term of 20 years. In the execution of a decree for the ejectment of *T.* from such lands, obtained by the landholder against *T.* in a suit to which *K.* was no party, *K.* was ejected from such lands. This decree was subsequently set aside, and *T.* recovered the occupancy of such

Digitized by Google

ACT XVIII. OF 1873—*contd.*

lands. *Held*, in a suit by *K.* against *T.* and the landholder, in which *K.* claimed the occupancy of the lands and mesne profits for the period during his dispossession, in virtue of the lease, that the suit was one cognizable by the Civil Courts, and not one on the subject-matter of which an application of the nature mentioned in § 95 of Act XVIII. of 1873 could have been made, so as to give the Courts of Revenue exclusive jurisdiction in such matter. KALIAN DAS *v.* TIKA RAM. *Spankie* and *Oldfield*, JJ.....**I. L. Rep. 2 All. 137, 1879.**

—— § 95, Cl. m—*Lease of Zemindari Rights—Wrongful Dispossession of Lessee by Lessor—Suit for Compensation—Jurisdiction of Civil and Revenue Courts.*] The defendant granted the plaintiffs a lease of his zemindari rights in certain villages for five years at a fixed annual rent. Two years before the expiration of the lease, the defendant dispossessed the plaintiffs of the villages and collected the rents from the tenants himself. The plaintiffs then sued the defendant in the Civil Courts to recover the moneys so collected by him :—

Held, by *Stuart*, C.J., that the suit was not one of the kind described in Act XVIII. of 1873, § 95, Cl. *m*. The lease given by the defendant was not a merely agricultural one, and did not simply establish the relation of landlord and tenant, but within its limits constituted an independent and indefeasible title and right, which the defendant had invaded, for which invasion he was liable in damages, the measure of which was the money improperly received and detained by him; and such a claim was cognizable only by the Civil Courts.

By *Pearson*, *Turner*, and *Oldfield*, JJ., that persons, who, like the plaintiffs, take from zemindars leases of their zemindari rights in lands, are unquestionably tenants, and are not deprived of this character, because in relation to the actual cultivator of the whole or some parts of the property leased they may be described as landlords. Such persons are subject to those provisions of the Rent Act which apply to tenants of all classes. Inasmuch as under an application in the Revenue Courts for compensation for wrongful dispossession, the plaintiffs could obtain the relief they sought in the present suit, the jurisdiction of the Civil Courts was ousted by the provisions of Act XVIII. of 1873,

ACT XVIII. OF 1873—*contd.*

§ 95, Cl. *m*, and the plaintiffs could obtain relief only in the Revenue Courts.

By *Spankie*, J.—The provisions of Cl. *m*, § 95, Act XVIII. of 1873, apply to the ordinary tenant or agricultural ryot paying rent for the use or occupation of land, and to the lessee of an entire estate for a fixed term of years, as the plaintiffs were; and as their claim was not of the nature of an application for compensation that could be made to a Revenue Court under that clause, the suit was properly instituted in the Civil Courts. ABDUL AZIZ *v.* WALI KHAN.....**I. L. Rep. 1 All. 338, 1877.**

—— § 106.

See **Civil Procedure Code, Act X. of 1877, § 32. 2.**

SHIV GOPAL *v.* BALDEO SAHAI... **I. L. Rep. 2 All. 264.**

—— § 177.

See **Pre-emption. 1.**

NARAIN SINGH *v.* MUHAMMAD FARUCK...**I. L. Rep. 1 All. 277.**

—— § 209.

See **Liability of Lambardar to Co-Sharer for Profits.**

MANGAL KHAN *v.* MUMTAZ ALI... **I. L. Rep. 2 All. 239.**

ACT XIX. OF 1873—§ 3, Cl. 1—*Khalisa Mahal*—Sale in execution.

See **Sale in Execution of Decree. 8.**

SHOWERS *v.* SETH GOBIND DASS. **I. L. Rep. 1 All. 400.**

—— § 39.

See **Res Judicata. 34.**

HUSAIN *v.* GOPAL...**I. L. Rep. 2 All. 428.**

—— §§ 43, 83, 241, Cl. 5.

See **Vendor & Purchaser. 2.**

HIRALAL *v.* GANESH...**I. L. Rep. 2 All. 415.**

—— § 62—Record of Rights—Jurisdiction of Civil and Revenue Courts.

See **Jurisdiction. 5.**

SUNDAR *v.* KHUMAN SINGH...**I. L. Rep. 1 All. 613.**

—— § 66.

See **Cess.**

LALA *v.* HIRA SINGH...**I. L. Rep. 2 All. 49.**

Digitized by Google

ACT XIX. OF 1873—*contd.*

—— § 66—Suit for Declaration of Zemindari Right to Cesses.

See **Declaratory Decree. 8.**

AKBAR KHAN *v.* SHEORATAN...**I. L. Rep. 1 All. 373.**

—— § 94—Record of Rights—Jurisdiction of Civil and Revenue Courts.

See **Jurisdiction. 5.**

SUNDAR *v.* KHUMAN SINGH.....**I. L. Rep. 1 All. 613.**

—— §§ 194, 195—Appointment of Manager to Estate of Lunatic.

See **Act XXXV. of 1858, § 9.**

MANOHAR LAL *v.* GAURI SHANKAR. **I. L. Rep. 1 All. 476.**

—— § 188.

See **Pre-emption. 1.**

NARAIN SINGH *v.* MUHAMMAD FARUCK...**I. L. Rep. 1 All. 277.**

See **Arbitration. 1.**

GOSHAIN GIRDHARIJI *v.* DURGA DEVI...**I. L. Rep. 2 All. 119.**

—— § 241—Record of Rights—Jurisdiction of Civil and Revenue Courts.

See **Jurisdiction. 5.**

SUNDAR *v.* KHUMAN SINGH...**I. L. Rep. 1 All. 613.**

—— § 241—*Revenue—Pattidar—Suit to recover Money paid on Account of Revenue due by Defendant—Jurisdiction.*] The plaintiff, a pattidar, who had paid a sum on account of a demand for Government revenue, not merely in respect of his own share, but also in respect of the shares of the defendants, his co-pattidars, sued to recover the sum paid in excess of his own quota. The Court of first instance dismissed the suit, deeming it to be one connected with or arising out of the collection of the revenue, which the Civil Courts were prohibited by § 241 of Act XIX. of 1873 from entertaining:—

Held by *Turner*, C. J. (Offg.), *Pearson* and *Oldfield*, JJ., that the Civil Courts were competent to entertain suits of this nature, and that the lower Court was wrong in regarding the claim as one connected with or arising out of the collection of the revenue within the meaning of that term in § 241 of Act XIX. of 1873; it was a suit by the plaintiff because he had been compelled to pay a debt for which the defendants were also liable jointly with him, a payment which gave him the right to call on them for contribution.

Per Spankie, J.,—Act XIX. of 1873 aims at keeping in the hands of the Revenue officers the settlement of every dispute connected with the collection of revenue, whether such disputes arise between the revenue-payers themselves, or between the Government officers and the revenue-payer.

The claim in this case arose out of the collection of the revenue, and the enforcement of the plaintiff's liability to pay the arrear due by his co-sharers, and was, therefore, included under Cl. (*i*) of § 241 of the Act; over such claim the Civil Courts had no jurisdiction, but only the Revenue Courts. RAM DAYAL *v.* GULAB SINGH. **I. L. Rep. 1 All. 26, 1875.**

ACT II. OF 1874.

See **Administrator-General's Act II. of 1874.**

ACT III. OF 1874.

See **Married Women's Property Act III. of 1874.**

ACT VI. OF 1874—Appeal from Order granting Certificate.

See **Letters Patent (Calcutta,) 1865, Cl. 15. 1.**

MOWLA BAKSH *v.* KISHEN PERTAB SAHI...**I. L. Rep. 1 Cal. 102.**

—— § 5—1. *Letters Patent* (*Calcutta*) 1862. *Cl.* 39—*Stat.* 24 & 25, *Vict.*, *C.* 67, § 22—*Stat.* 24 & 25 *Vict.*, *C.* 104, § 9—*Powers of the Legislature.*] The provision in § 5 of Act VI. of 1874, that where there are concurrent decisions on facts, the case must, in order to give a right of appeal to the Privy Council, involve some substantial question of law, is not *ultra vires* of the Indian Legislature as being a curtailment of the jurisdiction given to the High Court of Calcutta by the Letters Patent of 1865, Cl. 39.

The Courts in India have no power to *admit* or *allow* an appeal to the Privy Council unless expressly authorized to do so by competent authority. The power to admit such appeals was conferred on the Sudder Dewanny Adawlut (Calcutta) by Beng. Reg. XVII. of 1792, § 2; certain restrictions were placed on the exercise of that power by the orders of Her Majesty in Council of 10th April 1838, passed in pursuance

Digitized by Google

ACT VI. OF 1874—*contd.*

of 3 & 4 Wm. IV., C. 41; and the practice of the High Court of Calcutta in the admission of appeals has also been regulated by certain rules of its own, made by the Sudder Dewanny Adawlut on the 17th December 1858, and by the High Court on the 30th July 1870. But there is nothing in Stat. 24 & 25 Vict., C. 67, which would prevent the Governor-General in Council altering or repealing any of those provisions.

The words "subject always to such rules and orders as are now in force" in Cl. 39 of the Letters Patent (Calcutta), 1865, do not incorporate those provisions into the Letters Patent, so as to remove them from the sphere of legislation by the Governor-General in Council. Clause 39 of the Letters Patent (Calcutta) was not inserted in pursuance of, and does not rest for its authority on, Stat. 24 & 25 Vict., C. 104; and, therefore, the admission of an appeal to the Privy Council is not one of those powers which the High Court is, by the first part of § 9 of Stat. 24 & 25 Vict., C. 104, commanded to exercise. Its existence is entirely independent both of that Act and the Letters Patent.

Section 22 of Stat. 24 & 25 Vict., C. 67, must be read with § 9 of Stat. 24 & 25 Vict., C. 104, by the express words of which latter enactment, "save as by such Letters Patent may be otherwise directed," all previously existing powers are reserved to the High Court, provided the Letters Patent do not interfere with them, and as to all such powers the Governor-General in Council is expressly empowered to legislate. The power of admitting appeals to the Privy Council, being one of those previously existing powers, is held by the High Court, under the Act and not under the Letters Patent, and, therefore, rendered by the Act itself, subject to the legislative control of the Governor-General in Council, to which it still remained subject when the old powers of the abolished Courts were merely repeated in the Letters Patent. Even if the power to admit an appeal were conferred by the Letters Patent, it is not a new power, and has, therefore, been made by the Act of Parliament expressly subject to the legislative control of the Governor-General in Council, but not of any other legislative authority in India.

The *ratio decidendi* of *Reg.* v. *Meares* (14 Beng. L. Rep. 106) dissented from. Where there were two concurrent decisions on facts, an application for leave to appeal to the Privy

ACT VI. OF 1874—*contd.*

Council was refused, the right of appeal from a decision of the High Court on its appellate side, simply on the ground that the subject-matter of the suit was above Rs. 10,000, having been taken away by Act VI. of 1874, § 5. *In the matter of the Petition of* FEDA HOSSEIN. *Markby*, J.....**I. L. Rep. 1 Cal. 431, 1876.**

—— § 5—**2.** *Appeal to Privy Council—Substantial Question of Law.*] The substantial question of law which, by § 5 of Act VI. of 1874, the appeal must involve in order to give an appeal to the Privy Council in a case where the decree appealed from affirms the decision of the Court below, is not limited to a question of law arising out of the facts as found by the Courts from whose decision it is desired to appeal. A question of law arising on the evidence taken in the case is, without reference to the findings of the lower Courts sufficient to found an appeal. MORAN *v.* MITTU BIBEE. *Pontifex*, J.....**I. L. Rep. 2 Cal. 228, 1876.**

—— § 8—§ 11, *Cl. b—Act IX. of* 1871, § 5—*Practice—Closing of the Court—Deposit of Money under Act VI. of* 1874, § 11, *Cl.* 6—*Power of Court to grant Special Permission.*] The petitioners had obtained a certificate on the 1st of September to appeal to Her Majesty in Council from a decision passed against them by the High Court on the 4th of May. Accordingly the period during which they were to deposit the amount for the translations of the record, under § 11, Cl. *b* of Act VI. of 1874, expired on the 4th November. The offices of the Court re-opened after the vacation on the 23rd October, but the Benches did not commence to sit till the 16th November. On the last mentioned date, the petitioner brought in the money, and it was refused by the officer of the Court as being too late:—

Held, that it was rightly refused, and that the Court had no power to grant permission to deposit it after the prescribed time.

In the matter of the Petition of LALLA GOPEECHAND. *Markby*, J...**I. L. Rep. 2 Cal. 128, 1876.**

—— §§ 11, 14, and 15—Dismissal of Appeal for Default in Deposit of Security, and in transcribing Record.

See **Appeal to the Privy Council. 4.**

THAKOOR KAPILNATH SINGH *v.* THE GOVERNMENT.....**I. L. Rep. 1 Cal. 142.**

Digitized by Google

ACT VI. OF 1874—*contd.*

—— § 11—*Deposit of Costs—Power to enlarge Time.*] The requirements of § 11, Act VI. of 1874, as to the deposit of costs are not absolutely imperative. The Court has power in its discretion to modify them, and when the period for making the deposit expires on a day when the offices of the Court are closed, it is a reasonable exercise of that discretion to allow the deposit to be made on the day they re-open. *In the matter of the Petition of* SOORJMUKHI KOER. *Garth*, C.J., *Macpherson* and *Markby*, JJ.....**I. L. Rep. 2 Cal. 272, 1877.**

ACT XIV. OF 1874.

See **Jurisdiction. 11.**

SURDHAREE *v.* MANSOOR ALLY...**I. L. Rep. 3 Cal. 298.**

ACT XV. OF 1874.

See **Jurisdiction. 11.**

SUBDHAREE *v.* MANSOOR ALLY...**I. L. Rep. 3 Cal. 298.**

ACT XVI. OF 1874.

See **Madras Act III. of 1865.**

REG. *v.* KANDAKORA...**I. L. Rep. 1 Mad. 223.**

ACT IX. OF 1875.

See **Majority Act IX. of 1875.**

ACT X. OF 1875.

See **High Court Criminal Procedure Act X. of 1875.**

ACT XIII. OF 1875.

See **Probate. 2.**

SHAMACHURN...**I. L. Rep. 1 Cal. 52.**

—— § 2.

See **Administration. 5.**

HEWSON...**I. L. Rep. 4 Cal. 770.**

ACT XVII. OF 1875.

See **Burmah Courts' Act.**

ACT XI. OF 1876.

See **Presidency Banks' Act XI. of 1876.**

ACT I. OF 1877.

See **Specific Relief Act I. of 1877.**

ACT X. OF 1877.

See **Civil Procedure Code, Act X. of 1877.**

ACT XII. OF 1879—§ 2—Decree — Order Returning Plaint after Issues filed is not.

See **Appeal—Civil. 23.**

ABDUL *v.* RAJINDRO...**I. L. Rep. 2 All. 357.**

ACT OF STATE.

See **Right to sue. 7.**

NOBIND CHUNDER DEY *v.* SECRETARY OF STATE FOR INDIA... **I. L. Rep. 1 Cal. 11.**

—— *Jurisdiction of Civil Courts.*] Where an estate is seized by the Government on behalf of the Crown by its right of conquest, and not by virtue of, or under colour of any legal title, but in the exercise of sovereign authority, and such estate is afterwards dealt with by the Government in accordance with its notions of what is just and reasonable, and not according to any rules of law to be enforced against them by their own Courts, such seizure and subsequent disposition of the estate is an Act of State, and cannot be questioned in a Municipal Court. SIRDAR BHAGWAN SINGH *v.* SECRETARY OF STATE FOR INDIA.....**L. Rep. 2 I. A. 38.**

ACTION FOR TROVER—By Wife against Husband.

See **Husband and Wife.**

HARRIS *v.* HARRIS...**I. L. Rep. 1 Cal. 285.**

ACTS DONE IN OFFICIAL CAPACITY BY COLLECTOR—As Administrator of Minor's Estate—Jurisdiction of Subordinate Judge.

See **Bombay Minors' ACT XX. of 1864, §§ 11 and 15.**

NARSINGRAV *v.* LUXMANRAV...**I. L. Rep. 1 Bom. 318.**

——As President of Municipality.

See **Jurisdiction. 18.**

GANGADHAR *v.* COLLECTOR OF AHMEDNAGAR...**I. L. Rep. 1 Bom. 628.**

ACTS DONE IN OFFICIAL CAPACITY BY MUNICIPAL COMMISSIONERS APPOINTED UNDER ACT XXI. OF 1850.

See **Jurisdiction. 18.**

GANGADHAR *v.* COLLECTOR OF AHMEDNAGAR...**I. L. Rep. 1 Bom. 628.**

Digitized by Google

ACT IMPOSING TAX—Construction of.

See **Madras Act III. of 1871.**

LEMAN *v.* DAMODARAYA.....**I. L. Rep. 1 Mad. 158.**

ACTS OF LIMITATION, CONSTRUCTION OF.

See **Construction of Statute. 3.**

UMIASHANKAR *v.* CHOTALAL.....**I. L. Rep. 1 Bom. 19.**

ACTS LIMITING RIGHT TO RESORT TO COURTS OF JUSTICE—Construction of.

See **Pensions' Act XXIII. of 1871. 2. 3.**

RAVJI *v.* DADAJI.....**I. L. Rep. 1 Bom. 523.**

GURUSHIDGAVDA *v.* RUDRAGAVDATI. **Ibid. 531.**

ACTS OF OWNERSHIP—Evidence of.

See **Limitation. 7.**

MOHIMA CHUNDER *v.* HURRU LALL. **I. L. Rep. 3 Cal. 768.**

ACTS IN PARI MATERIA—Construction of.

See **Jurisdiction. 18.**

COLLECTOR OF SEA CUSTOMS *v.* PUNNIAR CHITHAMBARAM...**I. L. Rep. 1 Mad. 89.**

ACTS—PENAL—Construction of.

See **Construction of Statute. 4.**

REG. *v.* BHISTA.....**I. L. Rep. 1 Bom. 308.**

ACTS RELATING TO PROCEDURE—Construction of.

See **Civil Procedure Code, Act X. of 1877, § 342.**

RATTANSI KALLIANJJ...**I. L. Rep. 2 Bom. 148.**

See **Construction of Statute. 5.**

SITARAM *v.* KHANDERAV...**I. L. Rep. 1 Bom. 368, 291.**

See **Appeal—Civil. 26.**

THAKUR PRASAD *v.* AHSAN ALI... **I. L. Rep. 1 All. 668.**

ACTS DONE IN EXERCISE OF SOVEREIGN POWERS.

See **Right to sue. 7.**

NOBIND CHUNDER DEY *v.* THE SECRETARY OF STATE FOR INDIA. **I. L. Rep. 1 Cal. 11.**

See **Act of State. 1.**

SIRDHAR BHAGWAN SINGH *v.* SECRETARY OF STATE FOR INDIA... **I. L. Rep. 2 I. A. 38.**

ADDING PARTIES TO SUIT.

See **Abatement of Appeal—Civil.**

MORESHWAR *v.* KUSHABA...**I. L. Rep. 2 Bom. 248.**

—— Limitation as to Added Parties.

See **Co-Sharers of Land. 4.**

BRYDONATH BAG *v.* GRISH CHUNDER ROY.....**I. L. Rep. 3 Cal. 26.**

See **Onus Probandi. 2.**

ABDUL *v.* MANJI...**I. L. Rep. 1 Bom. 295.**

—— Suit for Damages for Abusing Plaintiff's Sister—Sister cannot be added as Plaintiff.

See **Parties to Suit. 6.**

SUBHAIYAR *v.* KRISTNAIYAR ..**I. L. Rep. 1 Mad. 383.**

—— Suit for Damages for Breach of Contract—Party claiming no Interest in Subject-matter of Suit cannot be added.

See **Parties to Suit. 7.**

KOEGLER *v.* PROSONNO COOMAR... **I. L. Rep. 2 Cal. 472.**

—— Suit for Damages on Sale by Sample, from Bulk not corresponding with Sample—Plaintiff cannot be compelled to add Defendant's Vendors as Parties.

See **Civil Procedure Code, Act X. of 1877 § 32. 1.**

MAHOMED BADSHA *v.* NICOL, FLEMING & Co...**I. L. Rep. 4 Cal. 355.**

—— Suit by One of two Co-Mortgagees, Lessors, for Share of Rent—Adding Co-Mortgagee as Defendant.

See **Civil Procedure Code, Act X. of 1877, § 32. 2.**

SHIB GOPAL *v.* BALDEO SAHAI... **I. L. Rep. 2 All. 264.**

Digitized by Google

ADDING RESPONDENT TO AN APPEAL AFTER TIME ALLOWED BY LIMITATION.

See **Parties to Suit. 8.**

THE COURT OF WARDS *v.* GAYA PERSAD...**I. L. Rep. 2 All. 107.**

ADJECTIVE AND SUBSTANTIVE LAW.

See **Limitation. 81.**

PASUPATI *v.* PASUPATI.....**I. L. Rep. 1 Mad. 52.**

ADJUSTMENT OF DECREE—Postpone Petition.

See **Postpone Petition.**

DARBHA *v.* RAMA...**I. L. Rep. 1 Mad. 387.**

—— *Money paid out of Court—Suit to Recover.*] *N.* having obtained a decree against *K.*, requested him to discharge certain sums due on outstanding bonds which *N.* had given to third persons, promising to credit the sums so paid, to the amount due under the decree. *K.* paid as requested, but *N.* took out execution in full of the decree, and the Court refused to recognize the payment made by *K.* out of Court. In a suit brought by *K.* for the money so paid:—

Held, that the payments not having been made directly in adjustment of the decree, the suit was not barred within the rule laid down in *Arunachella Pillai* v. *Appava Pillai* (3 Mad. H. C. Rep. 188). KUNHI MOIDIN KUTTI *v.* RAMEN UNNI. *Morgan*, C. J., and *Innes*, J.....**I. L. Rep. 1 Mad. 203, 1877.**

ADMINISTRATION — Certificate of — of Estate of Deceased Member of Undivided Hindu Family.

See **Certificate of Administration.**

GURACHARIYA *v.* SWAMIRAYACHARYA.....**I. L. Rep. 3 Bom. 431.**

—— Certificate of—Necessary for Suit on Behalf of Minor.

See **Bombay Minors' Act XX. of 1864, § 2.**

MURLIDHAR *v.* SUPDU...**I. L. R. 3 Bom. 318.**

—— Duty Paid in England.

See **Administration. 4.**

—— Infant Hindu Widow—Administration of Husband's Estate.

See **Administration. 3.**

ADMINISTRATION—*contd.*

—— Letters of—to Administrator-General.

See **Administration. 5.**

—— Money paid after Intestate's Death for Support of Family.

See **Administration. 1.**

—— Parsis—Next of Kin's Share Liable for Debt Due to Intestate.

See **Administration. 2.**

—— With Will annexed.

See **Indian Succession Act X. of 1865, § 258.**

WILSON.....**I. L. R. 1 Cal. 149.**

—— Payment of Time-barred Debt by Administrator-General.

See **Time-barred Debt.**

ADMINISTRATOR-GENERAL *v.* HAWKINS...**I. L. Rep. 1 Mad. 267.**

1. —— *Claim against the Estate for Moneys paid after Intestate's Death for Surviving Members of his Family.*] A plaintiff in an administration suit sought to render the estate of the intestate liable for certain sums, alleged to have been paid by the plaintiff out of his own moneys, after the intestate's death, for the household expenses of his widow and younger son: *Held*, that the moneys paid, after the death of the intestate, for the household expenses of his family, could not be charged to the estate, in the absence of any special agreement or testamentary provision to that effect, but could only be a debt due in their individual capacity by the members of the family for whom such sums were paid. DHANJIBHAI B. GUJRAT *v.* NAVAZBAI. *Green*, J.....**I. L. Rep. 2 Bom. 75, 1877.**

2. —— *Liability of Share of Next of Kin for Time-barred Debt due to intestate Parsis.*] *Semble*, that the rule followed by the Courts of Equity in England whereby, notwithstanding the provisions of the Statute of Limitation, the share of one of the next of kin in the estate of an intestate, while in the hands of the administrator, is liable for a debt due by the next of kin to the deceased, though barred at the date of the death of the testator, is applicable in the Courts of British India. DHANJIBHAI B. GUJRAT *v.* NAVAZBAI. *Green*, J.....**I. L. Rep. 2 Bom. 75, 1877.**

S. C. under **Act XXI. of 1865, § 8.**

See **Time-barred Debt.**

ADMINISTRATOR-GENERAL *v.* HAWKINS...**I. L. Rep. 1 Mad. 267.**

Digitized by Google

ADMINISTRATION—*contd.*

3.——*Infant Hindu Widow — Administration of Husband's Estate—Maintenance—Special Citation—Caveat.*] On an application by the father of an infant Hindu widow for the grant of letters of administration to him, as her guardian, of the estate of her deceased husband, and of the estate of the husband's mother, it appeared that the only property of her husband consisted of a sum of money ordered to be paid to him under a certain decree, upon his constituting himself the representative of his mother. This he had not done. It also appeared that there were no unliquidated debts due by the husband. The sum of money in question was in the hands of the Official Trustee.

Held, that letters of administration could not be granted to the father, but that the widow could apply when she came of age, and that until that time the Official Trustee could pay the income to her next friend for her maintenance.

A special citation had been served upon the step-mother of the husband, and she had entered a caveat.

Held, that she had no right to enter a caveat simply because she had received a special citation. *In the Goods of* HURRY DASS BONNERJEE and SREEMUTTY GANGAMONEY DABEE. *Pontifex*, J.....**I. L. Rep. 4 Cal. 87, 1878.**

4. —— *Fees—Liability of Property on which Duty paid in England to pay Duty in India—Court Fees' Act VII. of* 1870, *Sched. I., Cl.* 11.] A testator died in England, and his executrix proved his will there, and then in the High Court at Calcutta, paying duty in each country on the assets there. On the death of the executrix the Administrator-General obtained letters of administration *de bonis non* of the testator's unadministered property, valued at a sum greater than that on which duty was originally paid in this country by the executrix, but which sum was made up of assets from England on which duty had already been paid there:

Held, that as the assets were within the jurisdiction of the High Court at the time of the grant of administration, and the Administrator-General could not have obtained possession of them otherwise than by virtue of the grant, they were liable to the *ad valorem* fee, prescribed by Cl. 11, Sched. I. of the Court Fees' Act. *In the Goods of* MURCH. *Garth*, C.J. ...**I. L. Rep. 4 Cal. 725, 1879.**

See In the Goods of GLADSTONE...**I. L. Rep. 1 Cal. 168.**

Under **Probate Duty. 2.**

ADMINISTRATION—*contd.*

5.——*Letters of Administration Granted to the Administrator-General—Form and Extent of Grant—Act X. of* 1865, §§ 187-190 *and* 242—*Act II. of* 1874, §§ 3 14, 16, 66—*Act XIII. of* 1875, § 2.] Section 2 of Act XIII. of 1875 does not apply to letters of administration granted to the Administrator-General. Grants of letters of administration to the Administrator-General are made to him by virtue of Act II. of 1874, and are not in any way affected by the provisions of Act XIII. of 1875. The form of the grant should be general and unlimited.

Per Garth, C.J.—Grants of administration to an Administrator-General are limited to his own Presidency.

Per White, J.—It is a distinct question what the effect of the grant will be, meaning by that what is the area in India over which the grant will operate. Beyond saying that its effect, whatever it may be, is not enlarged by § 2 of Act XIII. of 1875, it is unnecessary to decide that question on the present application. *In the Goods of* HEWSON. *Garth*, C. J., and *White*, J. ...**I. L. Rep. 4 Cal. 770; 4 Cal. Rep. 42, 1879.**

ADMINISTRATION ACCOUNTS.

See **Hindu Law—Will. 3.**

SURBOMUNGOLA *v.* MOHENDRONATH..... **I. L. Rep. 4 Cal. 508.**

ADMINISTRATION SUIT—Decree in Creditor's—Effect of.

See **Certificate to Collect Debts. 2.**

TREEPOORASOONDERY DOSSEE *v.* DEBENDRONATH TAGORE...**I. L. Rep. 2 Cal. 45.**

ADMINISTRATOR-GENERAL — Commission Awarded to—Appeal from Order.

See **Administrator-General's Act II. of 1874, § 27.**

SOMASUNDARAM CHETTI *v.* ADMINISTRATOR-GENERAL.....**I. L. Rep. 1 Mad. 148.**

—— Grant of Letters of Administration to.

See **Administration. 5.**

HEWSON...**I. L. Rep. 4 Cal. 770.**

——May pay Time-barred Debt.

See **Time-barred Debt.**

ADMINISTRATOR-GENERAL *v.* HAWKINS...**I. L. Rep. 1 Mad. 267.**

Digitized by Google

ADMINISTRATOR-GENERAL'S ACT II. OF 1874.

See **Administration. 5.**

HEWSON...**I. L. Rep. 4 Cal. 770.**

—— §§ 27, 54—*Commission to Administrator-General—Appeal from Order—Letters Patent, Cl.* 15.] An order passed by a single Judge of the High Court under Act II. of 1874, § 27, ascertaining the commission payable to the Administrator-General, is in the nature of an adjudication, and open to revision and appeal by the High Court under the 15th Clause of the Letters Patent of 1865 (Madras).

Though such order, being discretionary, will not under ordinary circumstances be interfered with on appeal, yet, where it is not in accordance with the rule laid down in § 54 of the Act, the Appellate Court will interfere to rectify it.

Where there has been only collection but no distribution of the assets by the Administrator-General, such order ought, in accordance with the rule laid down in § 54 of the Act, to award only half of the full commission of 5 per cent. SOMASUNDARAM CHETTI *v.* ADMINISTRATOR-GENERAL. *Morgan*, C.J, and *Innes*, J...**I. L. Rep. 1 Mad. 148, 1876.**

—— § 54—Commission to Administrator-General.

See **§ 27,** *supra.*

—— § 63.

See **Res Judicata. 21.**

SMITH *v.* SECRETARY OF STATE...**I. L. Rep. 3 Cal. 340.**

ADMISSIONS—Evidence of.

See **Hindu Law—Partition. 7.**

RAM COOMAR *v.* JOGENDER...**I. L. Rep. 4 Cal. 56.**

—— By Co-Mortgagors of Service of Notice of Foreclosure—Suit to Foreclose entire Estate—Beng. Reg. XVII. of 1806, § 8.

See **Mortgage. 10.**

NORENDER *v.* DWARKA LAL...**L. Rep. 5 I. A. 18; I. L. Rep. 3 Cal. 397.**

—— By Co-Defendant.

See **Admission. 1.**

—— By Defendant to Attorney in Presence of Plaintiff.

See **Privileged Communication. 2.**

MEMON HAJEE *v.* MOLVI ABDUL...**I. L. Rep. 3 Bom. 91.**

ADMISSIONS—*contd.*

—— *By one Co-Defendant—Admission by Implication.*] An admission of a fact on the pleadings by implication is not an admission for any other purpose than that of the particular issue, and is not tantamount to proof of the fact. An admission, or even confession of judgment by one of several defendants in a suit is no evidence against another defendant. *Per Cur.* AUMIRTOLAL BOSE *v.* RAJONEEKANT MITTER...**L. Rep. 2 I A. 113, 125, 129, 1874.**

S. C. under **Hindu Law—Inheritance—Daughters—Daughters' Sons,** and under **Limitation.**

ADMISSION OF REVIEW AFTER THE EXPIRATION OF 90 DAYS.

See **Review. 7.**

LUCHMAN SINGH *v.* SHUMSHERE SINGH...**L. Rep. 2 I. A. 58.**

ADMISSION BY SOME OF THE PARTIES TO A DEED PRESENTED FOR REGISTRATION OF THEIR EXECUTION THEREOF, BUT DENIAL BY THEM OF ITS EXECUTION BY THE OTHER PARTIES—Procedure for Registering Officer.

See **Registration. 23.**

MAHOMED EWAZ *v.* BIRJ LALL...**L. Rep. 4 I. A. 166.**

ADMISSION BY TENANT OF LIABILITY TO PAY RENT—Non-Payment by Occupancy Ryot for 12 Years, confers no Title, nor makes Possession adverse.

See **Limitation. 21.**

PORESH NARAIN *v.* KASSI CHUNDER.**I. L. Rep. 4 Cal. 661.**

ADMISSION OF TIME-BARRED APPEAL.

See **Time-barred Appeal. 1. 2.**

DUBEY SAHAI *v.* GANESH LALL...**I. L. Rep. 1 All. 34.**

ZAIBULNISSA BIBI *v.* KULSUM BIBI...**I. L. Rep. 1 All. 250.**

ADOPTED SON—Definition and Restriction of Rights of—by Agreement between Natural and Adoptive Parents.

See **Hindu Law—Adoption. 5. 17.**

RADHABAI *v.* GANESH...**I. L. Rep. 3 Bom. 7.**

RAMASWAMI *v.* VENCATARAMAIYAN.**L. Rep. 6 I. A. 196.**

Digitized by Google

ADOPTED SON—*contd.*

—— Inherits Property inherited by his Adoptive Mother from her Father.

See **Hindu Law — Inheritance — Adopted Son.**

SHAM KUAR *v.* GAYA DIN...**I. L. Rep. 1 All. 255.**

—— Share of—and of a Natural Son on Partition in a Mitakshara Family.

See **Hindu Law—Partition. 11.**

RAGHUBANUND *v.* SADHU...**I. L. Rep. 4 Cal. 425.**

ADOPTION—CANCELLATION OR RENUNCIATION OF — By Adoptive Father.

See **Hindu Law—Adoption. 18.**

SUKHBASI LAL *v.* GUMAN SINGH... **I. L. Rep. 2 All. 366.**

ADOPTION—CONDITIONAL.

See **Hindu Law—Adoption. 5. 17.**

RADHABAI *v.* GANESH...**I. L. Rep. 3 Bom. 7.**

RAMASAWMI *v.* VENCATARAMAIYAN. **L. Rep. 6 I. A. 196; I. L. Rep. 2 Mad. 91.**

ADOPTION OF DAUGHTER'S SON—Void among Brahmans, Kshattryas and Vaishyas—Lingayets are Sudras.

See **Hindu Law—Adoption. 6. 7.**

GOPAL *v.* HANMANT...**I. L. Rep. 3 Bom. 273.**

BHAGIRTHIBAI *v.* RADHABAI..... **Ibid. 298.**

—— Valid among Jains.

See **Jain Law. 2.**

SHEO SINGH RAI *v.* MUSSUMUT DAKHO...**L. Rep. 5 I. A. 87; I. L. Rep. 1. All. 688.**

ADOPTION OF DISTANT KINSMAN WHEN SON OF BROTHER OF WHOLE BLOOD EXISTS.

See **Hindu Law—Adoption. 8.**

SRIMATI UMA DEVI *v.* GOKOOLANAND...**L. Rep. 5 I. A. 40. C. S. I. L. Rep. 3 Cal. 587.**

ADOPTION OF ELDEST SON—Valid when made.

See **Hindu Law—Adoption. 2.**

JANOKEE DEBEA *v.* GOPAUL ACHARJEA ..**I. L. Rep. 2 Cal. 365.**

ADOPTION—GIFT AND ACCEPTANCE.—Gift by Wife against Will of Husband void.

See **Hindu Law—Adoption. 15.**

RANGABAI *v.* BHAGIRTHIBAI...**I. L. Rep. 2 Bom. 377.**

ADOPTION AMONG JAINS—Daughter's Son, valid.

See **Jain Law. 2.**

SHEO SINGH RAI *v.* MUSST. DAKHO. **L. Rep. 5 I. A. 87; I. L. Rep. 1 All. 688.**

—— Sister's Son, valid.

See **Hindu Law—Adoption. 1.**

HASSAN ALI *v.* NAGA MAL...**I. L. Rep. 1 All. 288.**

ADOPTION — LIMITATION TO SUIT TO SET ASIDE AN.

See **Limitation. 66.**

RAJ BAHADOOR *v.* ACHUMBIT...**L. Rep. 6 I. A. 110; 6 Cal. Rep. 12.**

ADOPTION BY MINOR.

See **Hindu Law—Adoption. 10.**

JUMOONA *v.* BAMASOONDARI ... **L. Rep. 3 I. A. 72; I. L. Rep. 1 Cal. 289; 25 W. R. 235.**

ADOPTION OF MOTHER'S SISTER'S SON—Among Sudras—valid.

See **Hindu Law—Adoption. 4.**

CHINNA NAGAYYA *v.* PEDDA NAGAYYA...**I. L. Rep. 1 Mad. 62.**

ADOPTION—NON-RECOGNITION OF.—*See* **Bombay Act II. of 1863, § 6, Cl. 3.**

VASADEV *v.* RAMKRISHNA...**I. L. Rep. 2 Bom. 529.**

ADOPTION OF ONLY SON.

See **Hindu Law—Adoption. 9.**

HANUMAN TIWARI *v.* CHIRAI... **I. L. Rep. 2 All. 164.**

—— Valid—once effected.

See **Hindu Law—Adoption. 2.**

JANOKEE *v.* GOPAUL...**I. L. Rep. 2 Cal. 336.**

—— Void, in Bengal even among Sudras.

See **Hindu Law —Adoption. 2. 3.**

JANOKEE DEBEA *v.* GOPAL ACHARJIA...**I. L. Rep. 2. Cal. 365.**

MANIK CHUNDER *v.* BHUGOBUTTY. **I. L. Rep. 3. Cal. 443.**

Digitized by Google

ADOPTION OF ONLY SON OF A SEPARATED BROTHER.

See **Hindu Law—Adoption. 8.**

SRIMATI UMA DEYI v. GOKOOLANAND... **L. Rep. 5 I. A. 40; I. L. Rep. 3 Cal. 587; 2 Cal. Rep. 51.**

ADOPTION—SANCTION OF GOVERNMENT FOR—Kulkarni Vatan—unnecessary.

See **Hindu Law—Adoption. 14.**

NARHAR v. NARRAYEN.....**I. L. Rep. 1 Bom. 607.**

ADOPTION OF SISTER'S SON—Void among Brahmans, Kshattryas, and Vaishyas—Lingayets are Sudras.

See **Hindu Law—Adoption. 6. 7.**

GOPAL v. HANMANT...**I. L. Rep. 3 Bom. 273.**

BHAGIRTHIBAI v. RADHABAI..... **Ibid. 298.**

—— Among Jains—Valid.

See **Hindu Law—Adoption. 1.**

HASSAN ALI v. NAGA MAL.....**I. L. Rep. 1 All. 288.**

ADOPTION AMONG SUDRAS.

—— Of Mother's Sister's Son—Valid.

See **Hindu Law—Adoption 4.**

CHINNA v. PEDDA...**I. L. Rep. 1 Mad. 62.**

—— Of Only Son.

See **Hindu Law—Adoption 2. 3.**

MANICK v. BHUGOBUTTY... **I. L. Rep. 3. Cal. 443.**

JANIKEE v. GOPAL... **I. L. Rep. 2 Cal. 365.**

ADOPTFON—SUIT BY ADOPTIVE FATHER TO SET ASIDE.

See **Hindu Law — Adoption. 18.**

SUKBASI LAL v. GUMAN SINGH... **I. L. Rep. 2 All. 366.**

ADOPTION—SUIT BY HINDU WIDOW TO SET ASIDE—by Daughter-in-law.

See **Right to sue. 8.**

JUMOONA v. BAMASOONDERI...**I. L. Rep. 3 I. A. 72; I. L. Rep. 1 Cal. 289; 25 W. R. 235.**

ADOPTION AMONG TALABDA KOLI CASTE.

See **Hindu Law—Adoption. 16.**

BHALA v. PARBHU...**I. L. Rep. 2 Bom. 67.**

ADOPTION BY WIDOW—Under Authority from Minor Husband.

See **Hindu Law—Adoption. 10.**

JUMOONA v. BAMASOONDERI...**L. Rep. 3 I. A. 72; I. L. Rep. 1 Cal. 289; 25 W. R. 235.**

—— After Succeeding as Heiress to her Son.

See **Hindu Law—Adoption. 12. 17.**

RAJAH VELLANKI v. VENKATA...**L. Rep. 4 I. A. 1; I. L. Rep. 1 Mad. 174.**

RAMASAWMI v. VENCATARAMAIYAN. **L. Rep. 6 I. A. 196; I. L. Rep. 2 Mad. 91.**

—— Consent of *Sapindas* in Undivided Family.

See **Hindu Law—Adoption. 11.**

SRI RAGHUNADA v. SRI BROJO...**L. Rep. 3 I. A. 154; I. L. Rep. 1 Mad. 69.**

—— Does not divest Property Vested by Inheritance.

See **Hindu Law—Adoption. 13.**

KALLY PROSONNO v. GOCOOL CHUNDER...**I. L. Rep. 2 Cal. 295.**

—— Among Jains—of Daughter's Son without Permission of Husband or Consent of Kinsmen—valid.

See **Jain Law. 2.**

SHEO SINGH RAI v. MUSSUMUT DAKHO...**L. Rep. 5 I. A. 87; I. L. Rep. 1 All. 688.**

—— Without Written Authority—Motives—Assent of *Sapindas*.

See **Hindu Law—Adoption. 12.**

RAJAH VELLANKI v. VENKATA RAMA...**L. Rep. 4 I. A. 1; I. L. Rep. 1 Mad. 174.**

ADULTERATION OF COTTON—In Foreign Territory—Possession of Adulterated Cotton in British Territory—Jurisdiction.

See **Bombay Cotton Frauds' Act VII. of 1878.**

IMPX. v. KHIMCHAND NARAYAN... **I. L. Rep. 3 Bom. 384.**

ADULTERATED COTTON — Possession of.

See **Bombay Cotton Frauds' Act IX. of 1863.**

REG. v. HANMANT GAVDA...**I. L. Rep. 1 Bom. 228.**

Digitized by Google

ADULTERY—Compounding—after Conviction.

See **Compounding Offences. 8.**

EMPRESS *v.* THOMPSON.....**I. L. Rep. 2 All. 339.**

—— Dissolution of Marriage Solemnized out of British India—Jurisdiction.

See **Divorce. 8.**

FOWLE *v.* FOWLE...**I. L. R. 4 Cal. 260 ; 3 Cal. Rep. 484.**

—— Marriage in Life-time of Husband—Caste Custom.

See **Hindu Law — Inheritance — Illegitimate Son. 3. 4.**

RAHI *v.* GOVIND.....**I. L. Rep. 1 Bom. 97.**

NARRAYAN *v.* LAVING...**I. L. Rep. 2 Bom. 140.**

See **Penal Code, § 494.**

REG. *v.* SAMBHU..... **I. L. Rep. 1 Bom. 347.**

—— Offspring of—Right of—to Inherit and to Maintenance,

See **Custom among Gosavis** and **Hindu Law—Inheritance—Illegitimate Son. 4. 5. 6.**

NARRAYAN *v.* LAVING...**I. L. Rep. 2 Bom. 140.**

RAHI *v.* GOVIND.....**I. L. Rep. 1 Bom. 97.**

VIRAMUTHI *v.* SINGARAVELU.....**I. L. Rep. 1 Mad. 306.**

ADVANCEMENT—Rule as to—not Preserved to Parsis.

See **Act XXI. of 1875, § 8.**

DANJIBHAI *v.* NAWAZBAI ..... **I. L. Rep. 2 Bom. 75.**

ADVERSE POSSESSION — Acquisition of Title by—to Diluviated Lands re-forming on Old Site.

See **Alluvial Lands.**

RADHA PROSHAD *v.* RAM COOMAR. **I. L. Rep. 3 Cal. 796 ; 1 Cal. Rep. 796.**

—— Declaration of Title may be made on Proof of—for 12 Years, through Specific Title also Alleged and not Proved.

See **Declaratory Decree. 6. 6a. 6b.**

SHIRO *v.* GOVIND ..... **I. L. R. 2 Cal. 418.**

GOLUCK *v.* NUNDO ... **I. L. R. 4 Cal. 690.**

GOSAIN DAS *v.* ISSUR CHUNDER... **I. L. Rep. 3 Cal. 224.**

ADVERSE POSSESSION—*contd.*

—— Executor of Will of Hindu—Void Bequest to Unascertained Class—Suit by Heir.

See **Limitation. 38.**

KHERODEMONEY *v.* DOORGAMONEY. **I. L. Rep. 4 Cal. 455 ; 2 Cal. Rep. 112.**

—— Grant by Wife in Husband's Absence—Possession of Grantee for twelve years, perfects Title.

See **Grant by Wife during absence of Husband.**

BEJOY *v.* KALLY ... **I. L. Rep. 4 Cal. 327.**

—— Of Immoveable Property in Bombay Presidency—Prescription.

See **Prescription. 2.**

RAMBHAT *v.* COLLECTOR OF POONA.....**I. L. R. 1 Bom. 592.**

—— Landlord and Tenant — Non-Payment of Rent for twelve years by Occupancy Ryot gives him no Title to the Land.

See **Limitation. 21.**

PORESH *v.* KASSI.....**I. L. Rep. 4 Cal. 661.**

—— Manager of Hindu Family holding Bulk of Estate—*Seer* Land held by others.

See **Hindu Law—Partition. 9.**

RUNJEET SINGH *v.* KOOER GUJRAJ SINGH.....**L. Rep. 1 I. A. 9.**

—— By Mortgagee in Possession.

See **Mortgage. 37.**

ALI MUHAMMAD *v.* LALTA BAKHSH. **I. L. Rep. 1 All. 655.**

—— *Patilki Watan*—Appointment by Collector of Coparcener to officiate as Patil, does not make Appointee's Possession—to other admitted Coparceners.

See **Declaratory Decree. 19.**

NINDANGAVDA *v.* MALANGAVDA ... **I. L. Rep. 1 Bom. 533, n.**

—— Service Lands held on Succession of Life Estates—Alienation by Incumbent—Possession of Alienee — against Heir of Alienor, from Death of latter.

See **Service Watan.**

BABAJI *v.* NANA .....**I. L. Rep. 1 Bom. 535, 536.**

Digitized by Google

ADVERSE POSSESSION—*contd.*

—— Service Lands—Death of Grantee—Possession of Heir—Right to resume.
See **Resumption. 2.**
KEVAL KUBER *v.* TALOOKDARI SETTLEMENT OFFICER... **I. L. Rep. 1 Bom. 586.**

——Suit for Possession alleging Specific Title and—Failure to prove Specific Title.
See GOLUCK CHUNDER MASANTA *v.* NUNDO COOMAR ROY... **I. L. Rep. 4 Cal. 699.**
See **Declaratory Decree. 6. 6a. 6b.**
SHIRO *v.* GOVIND.....**I. L. Rep. 2 Cal. 418.**
GOLUCK *v.* NUNDO...**I. L. Rep. 4 Cal. 690.**
GOSSAIN DASS *v.* ISSUR CHUNDER. **I. L. Rep. 3 Cal. 224.**

——Suit to Redeem—Denial of Mortgage and Allegation of Acquisition of Title by.
See **Onus Probandi. 6.**
RUTTON KUAR *v.* JIWAN SINGH... **I. L. Rep. 1 All. 194.**

ADVOCATE GENERAL—Case certified by—Power of High Court on—to consider the Merits.
See **Evidence. 13.**
REG. *v.* HURRIBOLE CHUNDER GHOSE...**I. L. Rep. 1 Cal. 207.**
See **Power of the High Court on a Case Reserved or Certified to consider the Merits of the Case.**
REG. *v.* PITAMBER JINA...**I. L. Rep. 2 Bom. 61.**

—— Necessity for making the—Party to Suit.
See **Suit for Management of a Religious Endowment.**
PANCHCOWRIE MULL *v.* CHUMROOLALL...**I. L. Rep. 3 Cal. 563; 2 Cal. Rep. 121.**

AD-VALOREM DUTY—Annuity charged on Testator's Estate.
See **Court Fees. 9.**
RUSHTON...**I. L. Rep. 3 Cal. 736.**

—— Annuity—"Value"—Court Fees' Act VII. of 1870, Sched. I, Cl. II.
See **Probate Duty. 1.**
RAMCHANDRA LAKSHMANJI .....**I. L. Rep. 1. Bom. 118.**

AD-VALOREM DUTY—*contd.*

—— On Probate taken out after Court Fees' Act came into Operation.
See **Court Fees. 9.**
GASPER...**I. L. Rep. 3 Cal. 733.**

AFFIDAVIT—Cross-examination on—as to Documents.
See **Practice—Civil. 3.**
KENNELLY *v.* WYMAN...**I. L. Rep. 1 Cal. 178.**

—— Right to use—on Return to Writ of *Habeas Corpus ad subjiciendum*—Practice.
See **Privilege from Arrest.**
In the matter of OMRITOLALL DEY. **I. L. Rep. 1 Cal. 78.**

—— Use of—on an Application for Transfer of Case under Act X. of 1875, § 147.
See **High Court Criminal Procedure Act X. of 1875, § 147. 3.**
REG. *v.* HADJEE JEEBUN BUX...**I. L. Rep. 1 Cal. 354.**

—— Use of—on Motion to Vary or Discharge Commissioner's Report.
See **Practice—Civil. 7.**
SUMAR AHMED *v.* HAJI ISMAIL. **I. L. Rep. 1 Bom. 158.**

AFFREIGHTMENT—Contract of.
See **Contract. 16.**
FLEMING *v.* KOEGLER...**I. L. Rep. 4 Cal. 237.**

AFTER-BORN CHILD—Gift to a Class—Postponement of period of Distribution—Child born after Testator's Death but before Period of Distribution takes.
See **Will. 5.**
MASEYK *v.* FERGUSSON...**1. L. Rep. 4 Cal. 670.**

"AFTER TWO COUNTRY VOYAGES."
See **Contract. 16.**
FLEMING *v.* KOEGLER...**I. L. Rep. 4 Cal. 237.**

AGE OF MAJORITY—Minor to whom Guardian *ad litem* Appointed.
See **Majority Act IX. of 1875, § 3.**
SUTTYA GHOSAL *v.* SUTTYANUND... **I. L. Rep. 1 Cal. 388.**

1.——*Hindu Law—Act XL. of* 1858—*Unconscionable Agreement—Usury.*] A Hindu resident and domiciled in Calcutta, but possessing lands

Digitized by Google

AGE OF MAJORITY—*contd.*

in the Mofussil paying revenue to Government, being more than 16 and less than 17 years of age, borrowed money in Calcutta from a professional money-lender, which he, in Calcutta, agreed to repay in Calcutta, with interest at 36 per cent. per annum. Having failed to pay, and being in Calcutta, he was sued in the High Court on the Original Side, for the amount of money he had agreed to pay, with interest. He had not been taken charge of—either as to his person or property—by the Court of Wards, or by any Civil Court. The defendant pleaded minority:—

Held, by the Full Bench, that the Hindu Law in Calcutta as to the age of majority was not altered by Act XL. of 1858, and by that law the end of 15 years is the age of majority of a Hindu resident and domiciled in the town of Calcutta, and that the defendant was not a minor at the time he executed the bond. On the merits, however, the Court of Appeal (*Garth*, C. J., and *Macpherson*, J.) *held*, affirming the judgment of *Phear*, J., that the plaintiff was only entitled to a decree for the amount actually received by the defendant from him with interest at 6 per cent. *Cally Churn Mullick* v. *Bhuggobutty Churn Mullick* (10 Beng. L. Rep. 231) approved and followed. MOTHOORMOHUN ROY v. SOORENDRO NARAIN...**I. L. Rep. 1 Cal. 109, 1875.**

S. C. under **Unconscionable Bargain.**

AGENT.

See **Principal and Agent.**

—— Acknowledgment of Mortgagor's Title by Mortgagee's—not sufficient.

See **Acknowledgment of Mortgagor's Title. 3.**

RAHMANI BIBI v. HULASA KUAR... **I. L. Rep. 1 All. 642.**

—— Commission during Life—Sale of Subject-matter of Agency—Compensation.

See **Compensation for Loss of Commission.**

COWASJI NANABHOY v. LALLBHOY VALLUBHOY ...**8 Bom. H. C. Rep. O. C. J. 209; I. L. Rep. 1 Bom. 466; L. Rep. 3 I. A. 200.**

AGENT—*contd.*

—— Power of—to Bind Principal by Compromise of Criminal Charge against Agent.

See **Duress.**

MOUNG SHOAY ATT v. KO BYAW. **L. Rep. 3 I. A. 61; I. L. Rep. 1 Cal. 330.**

AGENT OF OWNER OF LAND—Duty of —to give Information to the Police of Offences.

See **Criminal Procedure Code, Act X. of 1872, § 90. 1.**

EMPRESS v. ACHIRAJ LALL...**I. L. Rep. 4 Cal. 603.**

AGREEMENT.

See **Contract.**

—— To Alter the Course of Devolution of Property prescribed by Law.

See **Hindu Law—Relinquishment of Share by Son.**

BALKRISHNA T. TENDULKAR v. SAVITRIBAI...**I. L. Rep. 3 Bom. 54.**

—— Not to Appeal.

See **Contract. 7.**

ANANT DAS v. ASHBURNER & CO...**I. L. Rep. 1 All. 267.**

—— Consideration—Unlawful.

See **Contract. 18.**

FATEH SINGH v. SANVAL.... **I. L. Rep. 1 All. 751.**

See **Consideration.**

—— Without Consideration—Void.

See **Contract. 6.**

MANNA LAL v. BANK OF BENGAL... **I. L. Rep. 1 All. 309.**

—— By Correspondence—Registration.

See **Registration. 10.**

See **Contract. 2.**

PORT CANNING LAND, &c., Co. v. SMITH...**L. Rep. 1 I. A. 124; L. Rep. 5 P. C. 114.**

—— To Create an Interest in Immoveable Property.

See **Registration. 12.**

VALAJI v. THOMAS...**I. L. Rep. 1 Bom. 190.**

—— Entered into in England, to be Performed in India.

See **Contract. 17.**

OAKES & Co. v. JACKSON...**I. L. Rep. 1 Mad. 134.**

Digitized by Google

AGREEMENT—*contd.*

—— Executed and Stamped in England, subsequently Executed in India—Stamp.

See **Contract. 17.**

OAKES & Co. *v.* JACKSON...**I. L. Rep. 1 Mad. 134.**

—— Not to Execute a Decree.

See **Estoppel. 6.**

PARAM SINGH *v.* LALJI MAL...**I. L. Rep. 1 All. 403.**

—— Affecting Land—Transfer of the Land.

See **Covenant running with the Land.**

ABADI BEGUM *v.* ASA RAM...**I. L. Rep. 2 All. 162.**

—— To Lend Money on Mortgage—Specific Performance of.

See **Specific Performance. 4.**

ANAKARAN KASMI *v.* SAIDAMADATH AVULLA...**I. L. Rep. 2 Mad. 79.**

—— With Pleader for Reward proportioned to Amount Decreed.

See **Inam Chitti.**

RAMCHANDRA *v.* KALU.....**I. L. Rep. 2 Bom. 362.**

—— For Purchase of Immoveable Property contemplating a future Conveyance.

See **Registration. 12.**

VALAJI *v.* THOMAS...**I. L. Rep. 1 Bom. 190.**

—— To Purchase Future Interest in Immoveable Property—Registration of.

See **Registration. 10.**

See **Contract. 2.**

PORT CANNING LAND, &c., Co. *v.* SMITH...**L. Rep. 1 I. A. 124.**

—— To Refer to Arbitration—Revocation of.

See **Contract. 8.**

KOEGLER *v.* THE CORINGA OIL Co. **I. L. Rep. 1 Cal. 42, 466.**

—— To Refer to Arbitration—Specific Performance of.

See **Contract. 8.**

KOEGLER *v.* THE CORINGA OIL Co. **I. L. Rep. 1 Cal. 42.**

AGREEMENT—*contd.*

—— To Refer to Arbitration—Suit for Damages for Breach of.

See **Contract. 8.**

KOEGLER *v.* THE CORINGA OIL Co. **I. L. Rep. 1 Cal. 42, 466.**

—— In Restraint of Trade.

See **Contract. 17.**

OAKES & Co. *v.* JACKSON...**I. L. Rep. 1 Mad. 134.**

See **Contract. 17a.**

VAITHELINGA *v.* SAMINADA...**I. L. Rep. 2 Mad. 44.**

—— To Share the Subject-matter of Litigation, when against Public Policy.

See **Champerty. 2.**

RAM COOMAR *v.* CHUNDER CANTO... **L. Rep. 4 I. A. 23; I. L. Rep. 2 Cal. 233.**

—— To Supply Labour.

See **Act XIII. of 1859.**

ROWSON *v.* HANAMA MESTRI... **I. L. Rep. 1 Mad. 280.**

AGREEMENT TO TAKE SHARES IN A COMPANY—*Memorandum of Association—Material Variance—Prospectus.*] The defendant's *munim*, who had authority in that behalf, on being shown a document which purported to be the Memorandum of Association of the plaintiff's Company, signed the same, in the defendant's name, as having taken four shares. This document was not registered as the Memorandum of Association of the Company, but another was, which differed from the document signed by the defendant's *munim*, in that it omitted in the 4th clause the word *yearly* before the word *profits* on which a certain commission was to be paid to the Secretaries, Agents, and Treasurers of the Company, and in substituting in the 6th Clause the words "The capital of the Company is Rs. 40,000, divided into 400 shares of Rs. 100 each, subject to be increased in accordance with the regulations of the Company and the legislative provisions for the time being in force in this behalf, *and which said shares may be divided, by a special resolution of the shareholders in general meeting, into shares of Rs.* 500 *or* 250 *each*," for the words, "The capital of the Company is Rs. 4,00,000, divided into 400 shares of Rs. 1,000 each, *with power to increase*," contained in the document signed by the defendant's *munim*. In a suit brought by

Digitized by Google

AGREEMENT TO TAKE SHARES IN A COMPANY—*contd.*

the plaintiff Company to recover the amount of two calls on the four shares so signed for by the defendant's munim :—

Held, that the case differed from those in which a person has been induced to take shares on the faith of a prospectus. A prospectus is in the nature of instructions only for the professional man to put into shape, in the same way as an agreement is often the foundation for a deed which may properly contain covenants and provisions not found in the agreement itself; and the only question which can arise is whether the obligations incurred under the Memorandum do or do not go beyond those which would have been incurred under the prospectus; but the Memorandum of Association is the Charter of the company, and defines the limitation of the power of the company. The company is, so to speak, identified by its Memorandum of Association. A person, therefore, who is asked to take shares in a projected company of which he is shown the Memorandum of Association, and consents to do so, does so on the full understanding that the document shown to him, or a true copy of it, will be registered as the Memorandum of Association. The company in which he agrees to take shares is the company to be incorporated by the registration of that document as its Memorandum of Association, and no other company; and that the defendant, therefore, would be entitled to say that he never agreed to take shares in any company of which the document signed by his *munim*, or a true copy of it, was not registered as the Memorandum of Association; but that, at any rate, the Memorandum of Association was the basis of the agreement to take shares; and that, on the analogy of those cases in which the Memorandum of Association had differed materially from the prospectus, the defendant must, in the absence of laches or other special circumstances, be entitled to relief if the variances between the registered Memorandum of Association and that signed by his *munim* were material.

No laches of the defendant were alleged; and though the first variance was not material, the second was, as, even assuming that the provision empowering the Company to subdivide the shares was illegal (a point which was not settled or free from doubt), still it had practically the effect of altering the position of the defendant from what it would have been had the

AGREEMENT TO TAKE SHARES IN A COMPANY—*contd.*

document signed by his *munim* been registered as the Memorandum of Association, and that, therefore, the defendant was not a shareholder in the company. ANANDJI VISRAM *v.* THE NARIAD SPINNING AND WEAVING COMPANY. *Westropp*, C. J., and *Sargent*, J ... **I. L. Rep. 1 Bom. 320, 1876.**

AGREEMENT BETWEEN ADOPTIVE AND NATURAL PARENTS OF A MINOR GIVEN IN ADOPTION, DEFINING OR RESTRICTING RIGHTS OF MINOR ON ADOPTION.

See **Hindu Law—Adoption. 5. 17.**

RADHABAI *v.* GANESH...**I. L. Rep. 3 Bom. 7.**

RAMASWAMI *v.* VENCATARAMAIYAN. **L. Rep. 6 I. A. 196; I. L. Rep. 2 Mad. 91.**

AGGREGATE SENTENCE—Conviction on several Charges—Offence made up of Parts.

See **Criminal Procedure Code, Act X. of 1872, § 454.**

EMPRESS *v.* BUDH SINGH...**I. L. Rep. 2 All. 101.**

—— Measures Right of Appeal.

See **Appeal—Criminal. 3.**

REG. *v.* RAMA...**I. L. Rep. 1 Bom. 223.**

—— Where Offence Substantially Single, not to exceed Punishment for greater Offence.

See **Conviction on Several Charges. 1. 2.**

REG. *v.* TUKAYA...**I. L. Rep. 1 Bom. 214.**

EMPRESS *v.* RAMESHAR RAI...**I. L. Rep. 1 All. 379.**

AKYAB—DISTRICT COURT OF.

See **Jurisdiction. 9.**

ABDOOL HAMED...**I. L. R. 4 Cal. 94; 2 Cal. Rep. 485.**

ALIENATION OF ANCESTRAL PROPERTY—By one of several Daughters succeeding as Heirs—Right of Sons of Deceased Daughter to set aside.

See **Hindu Law—Inheritance—Daughter's Sons. 2.**

BAIJNATH *v.* MAHABIR.....**I. L. Rep. 1 All. 608.**

Digitized by Google

ALIENATION OF ANCESTRAL PROPERTY—*contd.*

—— Gift of Undivided Share by Member of Undivided Family.

See **Hindu Law—Gift. 2.**

BALLABH DAS *v.* SUNDER DAS..... **I. L. Rep. 1 All. 429.**

—— For Maintenance of Illegitimate Son.

See **Hindu Law—Maintenance of Illegitimate Son. 3.**

RAJAH PARICHAT *v.* ZALIM SINGH. **L. Rep. 4 I. A. 159; I. L. Rep. 3 Cal. 214.**

—— By Member of Undivided Hindu Family —of his Share, by Voluntary Alienation.

See **Hindu Law — Alienation of Ancestral Property. 2. 3. 4. 5. 7.**

GIRDHAREE LALL *v.* KANTOO LALL. **L. Rep. 1 I. A. 321; 14 Beng. L. Rep. 187.**

MUSST. PHOOLBAS *v.* LALLA JAGESHUR...**L. Rep. 3 I. A. 7; I. L. Rep. 1 Cal. 226.**

SURAJ BUNSI KOER *v.* SHEO PERSHAD SINGH...**L. Rep. 6 I. A. 88.**

JALLIDAR SINGH *v.* RAM LALL..... **I. L. Rep. 4. Cal. 723.**

CHAMALLI KUAR *v.* RAM PRASAD. **I. L. Rep. 2 All. 267.**

See **Hindu Law—Gift. 2.**

BALLABH DAS *v.* SUNDER DAS..... **I. L. Rep. 1 All. 429.**

See **Hindu Law — Undivided Family. 3.**

DEENDAYAL *v.* JUGDEEP...**L. Rep. 4 I. A. 247; I. L. Rep. 3 Cal. 198.**

—— Mortgage of Family House.

See **Hindu Law — Alienation of Ancestral Property. 1.**

BHIKAN DAS *v.* PURA...**I. L. Rep. 2 All. 141.**

—— Mortgage by Father during Son's Minority —Suit to enforce Mortgage—*Onus Probandi.*

See **Onus Probandi. 7.**

BHEKNARAIN SINGH *v.* JANUK SINGH.....**I. L. Rep. 2 Cal. 438.**

ALIENATION OF ANCESTRAL PROPERTY—*contd.*

—— Mortgage by Father—Purchaser at Execution Sale with Notice of Co-Sharers' Claim—Effect of Execution Sale on the Share of Deceased Judgment Debtor.

See **Hindu Law—Alienation of Ancestral Property. 4.**

SURAJ BUNSI KOER *v.* SHEO PERSHAD SINGH.....**L. Rep. 6 I. A. 88.**

—— By Sale in Execution of Decree against a Member of an Undivided Family.

See **Bombay Act V. of 1862. 2.**

ARDASIR *v.* MUSE...**I. L. Rep. 1 Bom. 601.**

See **Civil Procedure Code, Act VIII. of 1859, § 269.**

KALAPA *v.* VENKATESH ...**I. L. Rep. 2 Bom. 676.**

See **Hindu Law—Alienation of Ancestral Property. 1. 2. 3. 4. 5.**

BHIKAN DAS *v.* PURA .....**I. L. Rep. 2 All. 141.**

GIRDHAREE LALL *v.* KANTOO LALL...**L. Rep. 1 I. A. 321; 14 Beng. L. Rep. 187.**

MUSST. PHOOLBAS KOONWAR *v.* LALLA JAGESHUR SAHOY ...**L. Rep. 3 I. A. 7; I. L. Rep. 1 Cal. 226.**

SURAJ BUNSI KOER *v.* SHEO PERSHAD SINGH...**L. Rep. 6 I. A. 88.**

JALLIDAR SINGH *v.* RAM LALL. **I. L. Rep. 4 Cal. 723.**

See **Hindu Law—Gift. 2.**

BALLABH DAS *v.* SUNDER DAS... **I. L. Rep. 1 All. 429.**

See **Hindu Law—Liability of Ancestral Estate in the hands of the Heir, for the Debts of the Ancestor.**

NARRAYAN ACHARYA *v.* NARSO KRISHNA...**I. L. Rep. 1 Bom. 262.**

See **Hindu Law—Undivided Property. 3. 4. 7. 8.**

DEENDAYAL LAL *v.* JUGDEEP NARAIN SINGH...**L. Rep. 4 I. A. 247; I. L. Rep. 3 Cal. 198.**

RAI NARAIN DAS *v.* NOWNIT LAL. **I. L. Rep. 4 Cal. 809.**

Digitized by Google

ALIENATION OF ANCESTRAL PROPERTY—*contd.*

LACHMI DAI KOORI *v.* ASMAN SINGH. **I. L. Rep. 2 Cal. 213.**

BABAJI LAKSHMAN *v.* VASADEV VENAYEK...**I. L. Rep. 1 Bom. 95.**

See **Sale in Execution of Decree. 10. 15.**

VENKATARAMAYYAN *v.* VENKATASUBBRAMANIA...**I. L. Rep. 1 Mad. 358.**

VENKATASAMI NAIK *v.* KUPPAIYAN. **Ibid. 354.**

—— Sale by Father during Son's Minority—Suit to set aside Sale.

See **Onus Probandi. 8.**

ADURMONI DEYI *v.* CHOWDHRY SIB NARAIN KUR.....**I. L. Rep. 3 Cal. 1.**

—— By Will in Favour of one Son to Exclusion of Others.

See **Hindu Law—Will. 11.**

LAKSHMAN DADA NAIK *v.* RAMCHANDRA DADA NAIK...**I. L. Rep. 1 Bom. 561.**

ALIENATION OF CHARITY PROPERTY BY TRUSTEE.

See **Breach of Trust.**

MANIKLAL *v.* MANIKSHA.....**I. L. Rep. 1 Bom. 269.**

ALIENATION OF DEWUTTUR PROPERTY BY MANAGER.

See **Dewuttur. 2.**

KONWUR DOORGANATH ROY *v.* RAM CHUNDER SEN.....**I. L. Rep. 4 I. A. 53; I. L. Rep. 2 Cal. 341.**

ALIENATION BY GUARDIAN.

See **Lien. 1.**

KUVARJEE *v.* MOTI ... **I. L. Rep. 3 Bom. 234.**

See **Mahomedan Law.—Sale by Guardian.**

HASAN ALI *v.* MEHDI HUSAIN... **I. L. Rep. 1 All. 533.**

See **Mortgage. 30. 31.**

ABHASI BEGUM *v.* MAHARANEE RAJROOP...**I. L. Rep. 4 Cal. 33; 2 Cal. Rep. 249.**

ALIENATION BY GUARDIAN—*contd.*

DEBI DUTT *v.* SUBADRA...**I. L. Rep. 2 Cal. 283.**

See **Review. 10.**

MADHO *v.* RUKMAN...**I. L. Rep. 2 All. 287.**

See **Sale by Guardian.**

1. ——*Cause of Action—Limitation Act IX. of* 1871, § 7—*Minority.*] One *K. R.* died in 1844, survived by his widow *O. T.* and an infant son *G. D.* In 1847 *O. T.* executed in favour of the defendant, a *maurasi ijara* of the property in suit, but did not describe herself in the document as guardian or mother of *G. D. G. D.* died before attaining majority, in 1855, and under an *anumati pattro* executed by *K. R.* before his death, *O T.* in 1858 adopted the plaintiff, who attained his majority in 1872. *O. T.* died in 1861. In a suit brought by the plaintiff in 1875 to set aside the *maurasi ijara* granted to the defendant by *O. T.*:—

Held, that the alienation by *O. T.* was as guardian of her minor son, *G. D.*, who died a minor, and to whom, therefore, no cause of action accrued during his minority, and against whom time did not begin to run. The cause of action arose on the plaintiff's attaining majority, and the suit, having been brought within three years from that date, was not barred. Even if the alienation by *O. T.* was made by her as a Hindu widow, the suit was not barred, because the cause of action would then have accrued on her death, and as at that time the plaintiff was a minor, the present suit was within time, under § 7, Act IX. of 1871. PROSONNA NATH ROY CHOWDRY *v.* AFZOLONESSA BEGUM. *Mitter* and *Maclean*, JJ...**I. L. Rep. 4 Cal. 523; 3 Cal. Rep. 391, 1878.**

2. ——*Certificated Guardian—Act XL. of* 1858—*Power of Uncertificated Guardian.*] The declaration in Beng. Reg. V. of 1799 that a "guardian or nearest of kin who by special appointment, or by the law and usage of the country, may be authorized to act" for infant or incompetent heirs of persons subject to the jurisdiction of the Zillah Court, "is not required to apply to the Courts of Justice for permission to take possession of the estate of the deceased" is not repealed by Act XL. of 1858.

By that Act, though the restriction previously imposed on the jurisdiction of the Civil Court is legislatively taken away, and the subject-matter

Digitized by Google

ALIENATION BY GUARDIAN—*contd.*

is expressly declared to be subject to that jurisdiction, yet resort to the Court is not made obligatory, except in cases where a necessity arises for commencing or defending a suit. And even then, for any sufficient reason, the Court having jurisdiction may dispense with the certificate.

All the sections of the Act from the 18th onwards, respecting powers, duties, and responsibilities, relate, not to guardians generally but to persons appointed, or to whom certificates have been granted, under the Act. As some persons could take charge of the estates of minors and maintain or defend suits connected therewith, without having received certificates, the rules in question apply only to certificated managers and to guardians appointed under the Act.

Section 18 applies in terms to a manager acting under a certificate, and to such manager only; it confers on him generally the powers of the owner, but in regard to acts of alienation beyond certain limits, it requires that his acts, in order to be valid, should have the previous sanction of the Court;—a provision expedient and proper in the case of a manager deriving his power from, and accountable to, the Court, but not suitable in the case of a manager altogether unconnected with the Court. It is impossible to support the view that no manager can deal with a minor's property at all, unless a certificate has been granted to him.

There is no indication, whatever part of the Act be examined, of any intention to alter or affect any provisions of Hindu or Mahomedan law as to guardians who do not avail themselves of the Act. The scope of the enactment is merely to remove legislative prohibitions, to confer expressly a certain jurisdiction, and to define exactly the position of those who avail themselves of, or are brought under, the Act, leaving persons to whom any existing rules of law apply, unaffected. A Hindu widow, therefore, as natural guardian of her minor son, and not deriving powers from any appointment or certificate under Act XL. of 1858, can give a good title to a purchaser of the property of her minor son. RAM CHUNDER CHUCKERBUTTY *v.* BROJONATH MOZUMDAR.....**I. L. Rep. 4 Cal. 929; 4 Cal. Rep. 247, 1879, F. B.**

ALIENATION BY HEIR-AT-LAW OF MAHOMEDAN ESTATE—Right of Creditors to follow Estate into the hands of the Purchaser.

See **Mahomedan Law—Right of Creditors to follow Estate of Debtor into hands of Purchaser from Heir.**

BAZAYET HOSSEIN *v.* DOOLI CHUND. **I. L. Rep. 4 Cal. 402; L. Rep. 5 I. A. 211.**

ALIENATION BY HINDU WIDOW.

See **Hindu Law—Will. 5.**

MAHOMED SHUMSOOL *v.* SHEWUKRAM.....**L. Rep. 2 I. A. 7.**

—— Accumulations.

See **Hindu Law—Alienation by Widow. 1.**

MUSST. BHAGBUTTI DAEE *v.* CHOWDHRY BHOLANATH THAKOOR.....**L. Rep. 2 I. A. 256; I. L. Rep. 1 Cal. 104.**

—— By Gift.

See **Hindu Law—Gift. 2.**

RUDR NARAIN SING *v.* RUP KUAR.....**I. L. Rep. 1 All. 734.**

—— Gift of *Soudayakam.*

See **Hindu Law — Alienation by Widow. 2.**

MADHAVARAYA *v.* TIRTHA SAMI... **I. L. Rep. 1 Mad. 307.**

—— Of Immoveable Property to pay Time-barred Debt of Husband, valid, for her Life.

See **Hindu Law—Alienation by Widow. 5.**

BAHANA *v.* PRABHU...**I. L. Rep. 2 Bom. 67, 71.**

—— Of Lands Purchased with Money granted in lieu of Maintenance—Will—Valid.

See **Hindu Law—Alienation by Widow. 4.**

And **Hindu Law—Will. 8.**

NELLAIKUMARU *v.* MARAKATHAMMAL...**I. L. Rep. 1 Mad. 166.**

—— Of Lands Purchased with *Stridhan*—Valid.

See **Hindu Law—Alienation by Widow. 3.**

VENKATA *v.* VENKATA...**I. L. Rep. 1 Mad. 281.**

Digitized by Google

ALIENATION OF MINOR'S PROPERTY.

See **Alienation by Guardian.**

See **Mahomedan Law—Sale by Guardian.**

See **Mortgage. 30. 31.**

See **Review. 10.**

See **Sale by Guardian.**

ALIENATON OF PROPERTY UNDER ATTACHMENT — Attachment not Properly Published—Alienation Valid.

See **Civil Procedure Code, Act VIII. of 1859, § 240. 1.**

NUR MAHOMED *v.* ALTAF ALI...**I. L. Rep. 2 All. 58.**

—— Attachment not Subsisting at Time of Alienation—Alienation valid.

See **Civil Procedure Code, Act VIII. of 1859, § 240. 2.**

ZAIB-UN-NISSA *v.* JAIRAM GIR... **I. L. Rep. 1 All. 616.**

ALIENATION OF THE RIGHT OF MANAGEMENT OF A PAGODA—Urallers—*Custom—Assignment of Trusteeship for Pecuniary Advantage of the Trustee.*] The appellant claimed to be the assignee of the *uraima* right, or right of management, of the Tracharamana pagoda and its subordinate *chetroms*, under an assignment from the *urallers* of that foundation.

It appeared that the so-called pagoda was not a pagoda in the ordinary sense of the word, but was merely a platform in the middle of a forest, upon which, once every year, certain ceremonies take place in honour of a particular idol; that to this annual festival a large number of persons resort; that considerable presents are made there by the worshippers; and that the festival was a matter of general interest to the Hindu inhabitants of that part of the country. It also appeared that the property of the trust consisted partly of a large landed estate and partly of jewels of great value.

It was admitted that, according to the constitution of the institution, the *urallers* for the time being were to be the *karnavens* or chief members of four different *tarwads*.

The assignment in question was executed by the then four *urallers*, and recited that the pagoda and its dependent institutions belonged exclusively to the four *tarwads* (families) of the *urallers*; that they were in debt to the amount

ALIENATION OF THE RIGHT OF MANAGEMENT OF A PAGODA—*contd.*

of Rs, 46,000; that this debt was likely to increase; that the appellant was willing to pay off the debts, and take over the pagoda and its property and conduct all the ceremonies; that the *urallers* had received Rs. 46,000 to pay the debts, and Rs 10,000 for their own use. In consideration of the above the deed assigned over to the appellant all the property of the pagoda, and *uraima* right of the four families, with the reservation of their right to join in the assembly for conducting the ceremonies, and receive the perquisites attached thereto :—

Held, that independently of custom, the *urallers* had no power under the common law of India to transfer their *uraima* right to the appellants.

And though the existence of a well proved and established custom authorizing such an alienation would prevail against the general law, yet no such custom had been established in the present case.

When, owing to the absence of documentary or other direct evidence of the nature of the foundation, and the rights, duties, and powers of the trustees, it becomes necessary to refer to usage, the custom to be proved must be one which *regulates the particular institution.*

Quære, whether in cases like the present any such *general* custom (as that contended for) can be set up and proved.

A custom to sanction not merely the transfer of a trusteeship, but, as in this case, the sale of a trusteeship for the pecuniary advantage of the trustee would be bad in law. RAJHA VURMAH VALIA *v.* RAVI VURMAH MUTHA...**L. Rep. 4 I. A. 76, 1876; I. L. Rep. 1 Mad. 235.**

ALIENATION OF SELF-ACQUIRED PROPERTY—Gift to one Son to Exclusion of Others—Valid.

See **Hindu Law—Gift. 1.**

SITAL *v.* MADHO... **I. L. Rep. 1 All. 394.**

ALENATION OF SERVICE LANDS.

See **Service Watan.**

BABAJI *v.* NANA...**I. L. Rep. 1 Bom. 535, 536.**

ALIENATION OF STHANAM LANDS.

See **Malabar Law. 1.**

CHEMMINIKARA *v.* KILIYANANANT. **I. L. Rep. 1 Mad. 88.**

Digitized by Google

ALIENATION BY TALOOKDAR—Right of—Act I. of 1869.

See **Oudh Proclamation of 1858, para. 8.**

HURPURSHAD *v.* SHEO DYAL...**I. L. Rep. 3 I. A. 259.**

ALIENATION OF TRUST PROPERTY BY TRUSTEE.

See **Breach of Trust.**

MANIKLAL *v.* MANIKSHA.....**I. L. Rep. 1 Bom. 269.**

ALIMONY—Should not be converted into Absolute Interest in, and Charge on—Husband's Estate.

See **Divorce. 3.**

FOWLE *v.* FOWLE.....**I. L. Rep. 4 Cal. 260; 3 Cal. Rep. 484.**

ALLUVIAL LANDS—*Diluviated Lands—Adverse Possession—Doctrine in Lopez's Case.*] The doctrine in the Case of *Lopes* v. *Muddun Mohun Thakoor* (13 Moo. I. A. 467; S. C. 5 Beng. L. Rep. 521) that diluviated lands, reforming on their old site, remain the property of their original owner, does not apply to land in which, before or after their reformation, an indefeasible title has been acquired by another person by adverse possession.

Where the plaintiff relies on an alleged adverse possession of lands for 12 years before or after their re-formation, the real point to be decided, is whether he has thus acquired a title. RADHA PROSHAD SINGH *v.* RAM COOMAR SINGH. **I. L. Rep. 3 Cal. 796; 1 Cal. Rep. 259, 1877, P. C.**

See **Re-formation of Submerged Lands.**

HURUSHAI *v.* SYUD LOOTF ALI... **L. Rep. 2 I. A. 28.**

ALTERATION OF CONTRACT—*Contract Act IX. of* 1872, § 37.] To a contract between the plaintiffs and the defendant for the purchase by the defendant of a cargo of salt, the plaintiffs, after the contract had been signed by the defendant, added in the margin:—"Ten days' demurrage will be allowed at Rs. 250 per diem":—

Held, that the alteration did not amount to an alteration or addition within the rule of English law: the alteration must be either something which appears to be attested by the signature, or something which alters the character of the instrument. EDE *v.* KANTO NATH SHAW. *Kennedy*, J.....**I. L. Rep. 3 Cal. 220, 1877.**

ALTERATION OF LAW PENDING EXECUTION OF DECREE.

See **Appeal—Civil. 5.**

CHINTO JOSHI *v.* KRISHNAJI NARAYAN...**I. L. Rep. 3 Bom. 421.**

See **Execution of Decree. 7.**

NARANDAS *v.* BAI MANCHHA... **I. L. Rep. 3 Bom. 217.**

ALTERATION OF PROCEDURE PENDING A SUIT.

See **Appeal—Civil. 2. 5. 9. 21. 25. 26.**

See **Civil Procedure Code, Act X. of 1877, § 342.**

RATTANSI KALLIANJI...**I. L. Rep. 2 Bom. 148.**

See **Construction of Statute. 5.**

SITARAM *v.* KHANDERAV.....**I. L. Rep. 1 Bom. 286.**

ALTERNATIVE RELIEF.

See **Misjoinder of Causes of Action. 2.**

JANOKINATH *v.* RAMRUJUN...**I. L. Rep. 4 Cal. 949.**

AMBIGUITY—Patent.

See **Registration. 28.**

RAJU *v.* KRISHNARAV...**I. L. Rep. 2 Bom. 273.**

AMBIGUOUS AGREEMENT.

See **Mortgage. 16.**

DEOJIT *v.* PITAMBAR...**I. L. Rep. 1 All. 275.**

AMBIGUOUS EXPRESSION—Repudiation of Wife by an.

See **Mahomedan Law—Divorce. 1.**

HAMID ALI *v.* IMLIAZAN.....**I. L. Rep. 2 All. 71.**

AMENDMENT OF CHARGE—Sanction to prosecute under § 211, Penal Code, authorizes Charge under § 192.

See **Criminal Procedure Code, Act X. of 1872, § 142. 1.**

EMPRESS *v.* NIPCHA...**I. L. Rep. 4 Cal. 712.**

AMENDMENT OF ISSUES AT THE HEARING—*Practice.*] "I do not say that, under certain circumstances, the Judge at the trial is precluded from allowing amendments, or from raising issues other than those settled. But what the Judge has decided at the settlement of issues by refusing to raise an issue, is a

Digitized by Google

AMENDMENT OF ISSUES AT THE HEARING—*contd.*

question which ought not to be re-opened by the Judge at the trial, and the Judge at the trial ought not to modify issues so as to re-open any questions which the Judge settling the issues has decided." BOYLE CHUND SINGH *v.* MAULARD. *Wilson*, J.....I. L. Rep. 4 Cal. 572, 1878.

S. C. under **Tender.**

AMENDMENT OF PLAINT.

See **Assignment of Mortgage.**

GANPAT *v.* ADARJI...I. L. Rep. 3. Bom. 312.

See **Civil Procedure Code, Act VIII. of 1859, § 7. 5.**

RAM TARRUN *v.* HOSSEIN BUKSH... I. L. Rep. 3 Cal. 785.

—— Adding Parties—Suit against Agent—Amendment by adding Principal refused.

See **Parties to Suit. 7.**

KOEGLER *v.* PROSONNO...I. L. Rep. 2 Cal. 472.

—— Disallowed in Appeal, where Objection to Non-Joinder of Plaintiffs was taken in Court below, and Defect not Remedied.

See **Parties to Suit. 9.**

DULAR CHAND *v.* BALRAM DAS... I. L. Rep. 1 All. 458.

—— Originally seeking Declaratory Decree, by paying Court Fees on Ejectment Suit, Refused.

See **Declaratory Decree. 8.**

CHOKALINGAPESHANA *v.* ACHIYAR. I. L. Rep. 1 Mad. 40.

—— Suit for Calls against a Firm—Amendment to charge one Member only Disallowed.

See **Company—Winding up—Contributory. 1.**

LONDON, BOMBAY, AND MEDITERRANEAN BANK *v.* BANJI ZUTANI... I. L. Rep. 2 Bom. 116.

—— Suit against Municipality—Substitution of President for Secretary as Defendant.

See **Act XV. of 1873, § 43.**

MANNI KASAUNDHAN *v.* CROOKE... I. L. Rep. 2 All. 296.

—— *Suit for Pre-emption.*] Where the plaintiff sued to enforce a right of pre-emption, alleging that the actual price of the property was not the price named in the deed of sale, but a smaller price, and claimed the property on payment of such smaller price, and did not allege in his plaint that he was ready and willing to pay any price which the Court might find to be the actual price, and on the day that his suit was finally disposed of presented an application to the Court stating that he was ready and willing to do so:—

Held, that the Court was not bound to allow him to amend his plaint and bring into Court the larger sum. DURGA PRASAD *v.* NAWAZISH ALI. *Pearson* and *Turner*, JJ...I. L. Rep. 1 All. 591, 1878.

AMENDMENT OF PLAINT—*contd.*

2. —— *Act VIII. of* 1859, § 26, *Cl.* 4, *and* §§ 135, 139, *and* 141—*Amendment of Plaint—Allegations of Fact—Limitation—Act IX. of* 1871, § 19—*Personal Equity.*] The ancestor of the plaintiffs obtained in 1817 from the Zemindar whom the first defendant represented, a *Maurasi istemrari pottah* of the lands to which the suit related, and obtained possession in 1837, in which year the Zemindari was sold for arrears of Government revenue, and purchased by Government as the highest bidder. This revenue sale was never set aside; but in 1842 the Government restored the estate to the Rajah Zemindar with all the prior encumbrances and settlements, but subject to his confirming an *ijarah* granted by Government to *W.* of a portion of the property for 20 years. The Rajah accordingly, on the 7th June 1842, granted *W.* an *ijarah pottah* for 20 years, in confirmation of the *pottah* granted by Government. In 1844 the plaintiff's father instituted a suit in the Midnapore Principal Sudder Ameen's Court, to recover possession of his *maurasi* tenure, which suit was dismissed by the Principal Sudder Amin on the 17th of November 1846, on the ground that "it appeared from the records of the case, and the Rajah defendant's answer, that the claim was established, but that the plaintiff was not entitled to recover possession during the term of *W.*'s *ijarah*." On appeal the Sudder Diwani Adawlut reversed this decree in 1848, but it was restored by the Privy Council by a decree made on 3rd February 1854, and *W.* re-entered into possession. Before the expiry of the lease to *W.*, owing to certain fraudulent transactions on the part of *A.*, who had got into possession of the estate as the purchaser of the interests of certain mortgagees of the Rajah, the property was again put up for sale for arrears of Government revenue, and was purchased by *M.*, a party to the abovementioned fraudulent transactions. The Rajah, however, succeeded in getting this sale

Digitized by Google

AMENDMENT OF PLAINT—*contd.*

reversed in 1866, and obtained possession of his estate in 1871. In a suit, instituted on the 23rd October 1873, against the Rajah and certain other parties to whom he had granted a *patni* lease, the plaintiffs alleged that the sale of 1837 was set aside by Government as illegal, and that consequently their tenure revived; that the effect of the Principal Sudder Amin's decision, confirmed by the Privy Council, was to postpone their right to obtain possession of their tenure, until after the expiration of *W.*'s lease; that when that lease expired the property was in the possession of *M.*, of the fraudulent character of whose title they had no knowledge; and that their right to sue in the present case consequently arose only in 1871. The defence was that the plaint disclosed no cause of action; that the cause of action, if any, was barred by limitation; and that the tenure was destroyed by the proceedings connected with the sale in 1837, which was never set aside. The Judge held that the plaint disclosed a cause of action which accrued in 1837, and that the suit was consequently barred, and he therefore dismissed the suit without taking any evidence. On appeal to the High Court it was admitted on the part of the plaintiffs that the sale in 1837 was never set aside, and that by the proceedings which took place before the Collector consequent upon such sale, the *maurasi* tenure then vested in the plaintiffs' ancestor was put an end to; but it was contended that as the Government returned the estate to the Rajah with all its encumbrances, the plaintiffs had, in consequence of the arrangement between the Rajah, the Government, and *W.*, a right as against the Rajah and all persons claiming under him, other than purchasers for value without notice, to be restored to his tenure; that his right was, by the decree of the Principal Sudder Amin of 1848, declared to be suspended until the expiration of *W.*'s *ijarah*; that this right was a personal equity against the Rajah, which could not be enforced when the *ijarah* expired against the mortgagees of the Rajah, because they had no notice of it; that this equity was destroyed by the sale for arrears of revenue in 1848, but arose again when the Rajah recovered possession of the estate in 1871. For the defendants it was contended that the plaintiffs ought not to be allowed to start a new case on appeal, and that as the equity now sought to be fastened on the Zemindar was never raised in the pleading, it could not now be set up:—

AMENDMENT OF PLAINT—*contd.*

Held, that the allegations of fact, set out above, as relied on in appeal, did not materially differ from those set out in the plaint, except as to allegations relating to the setting aside of the revenue sales; and that under §§ 139 and 141 of Act VIII. of 1859 it was competent to the plaintiffs to amend their case at any time before a final decision, and to put it as they sought to put it in appeal; and as if the plaintiffs succeeded in establishing their case so amended, the suit would not be barred, it was necessary that the suit should be remanded for trial.

Per Markby, J.—Section 19 of Act IX. of 1871 did not apply to this case, because the plaintiffs did not allege that they claimed through *M.* or *A.*, by whose fraud they alleged they were kept in ignorance of their rights. Taking Cl. 5 of § 26 of Act VIII. of 1859 with § 5, when a whole estate bearing a name is sued for, the boundaries need not be given.

The practice that the Privy Council wish to enforce by their decision in *Eshen Chunder Sing* v. *Shama Churn Bhutto* (11 Moo. I. A. 7), when they say at p. 20 that they desire to point out the "absolute necessity that the determination in a cause should be founded on a case to be found in the pleadings, or involved in or consistent with the case made thereby," is not an absolutely rigid adherence to the plaint and written statements, which the Code (Act VIII. of 1859) declares not be necessary, but that care should be taken to raise properly on the issues and at the proper time the questions to be tried, so as to give the parties an opportunity of producing their evidence and being heard on the points on which the decision of the case ultimately turns.

Per Mitter, J.—*Quære*, whether if the plaintiffs' case were established, their claim would not be saved from the operation of the Law of Limitation by § 29 of Act I. of 1845. RAMDAYAL KHAN *v.* AJOODHIA RAMKHAN. *Markby* and *Mitter*, JJ.....**I. L. Rep. 2 Cal. 1, 1876.**

S. C. under **Civil Procedure Code, Act VIII. of 1859, § 26.**

AMENDMENT OF PROBATE.

See **Probate. 4.**

In the Goods of WHITE...**I. L. Rep. 4 Cal. 582.**

Digitized by Google

AMENDMENT OF SUMMONS—Should be allowed if taken out in wrong form through Mistake of Clerk of Court.

See **Small Cause Court—Presidency Town. 2.**

MOWLA *v.* BALA ... **I. L. Rep. 2 Bom. 91.**

ANCESTRAL PROPERTY—Alienation by Co-Sharer of Undivided Share in—by Voluntary Alienation.

See **Hindu Law—Alienation of Ancestral Property. 2. 3. 4. 5. 7.**

GIRDHAREE LALL *v.* KANTOO LALL. **L. Rep. 1 I. A. 321 ; 14 Beng. L. Rep. 187.**

MUSST. PHOOLBAS KOOMAR *v.* LALL JUGGESHUR ROY...**L. Rep. 3. I. A. 7 ; I. L. Rep. 1 Cal. 226.**

JALLIDAR SINGH *v.* RAM LALL... **I. L. Rep. 4 Cal. 723.**

CHAMAILI KUAR *v.* RAM PRASHAD. **I. L. Rep. 2 All. 267.**

See **Hindu Law—Gift. 2.**

BALLABH DAS *v.* SUNDER DAS... **I. L. Rep. 1 All. 429.**

See **Hindu Law—Undivided Family. 3.**

DEENDAYAL *v* JUGDEEP...**L. Rep. 4 I. A. 247 ; I. L. Rep. 3 Cal. 198.**

See **Onus Probandi. 7. 8.**

ADURMONI *v.* CHOWDHRY S. KUR... **I. L. Rep. 3 Cal. 1.**

BHEKNARAIN *v.* JANUK...**I. L. Rep. 2 Cal. 438.**

—— Alienation of—by one of several Daughters, succeeding as Heirs—Right of Sons of Deceased Daughter to set aside.

See **Hindu Law—Inheritance—Daughter's Sons.**

BAIJNATH *v.* MAHABIR. **I. L. Rep. 1 All. 608.**

—— Alienation of—for Maintenance of Illegitimate Son.

See **Hindu Law—Maintenance of Illegitimate Son.**

RAJAH PARICHAT *v.* ZALIM SINGH. **L. Rep. 4 I. A. 159 ; I. L. Rep. 3 Cal. 214.**

ANCESTRAL PROPERTY—*contd.*

—— Gift of Undivided Share in.

See **Hindu Law—Gift. 2.**

BALLABH DAS *v.* SUNDER DAS... **I. L. Rep. 1 All. 429.**

—— Immoveable Property Purchased with Ancestral Property.

See **Hindu Law—Ancestral Property.**

SHAM NARAIN SINGH *v.* RUGHOOBURDYAL... **I. L. Rep. 3 Cal. 508.**

—— Immoveable—Son's Interest in.

See **Hindu Law—Undivided Family. 5.**

BALDEO DAS *v.* SHAM LAL... **I. L. Rep. 1 All. 77.**

See **Hindu Law—Liability of Ancestral Estate in the hands of the Heirs for the Debts of the Ancestors.**

NARAYAN ACHARYA *v.* NARSO KRISHNA...**I. L. Rep. 1 Bom. 262.**

—— Liability of—in the hands of the Heir, to Debt of the Ancestor.

See **Hindu Law—Alienation of Ancestral Property. 2. 3. 4.**

GIRDHAREE LALL *v.* KANTO LALL.. **L. Rep. 1 I. A. 321.**

MUSST. PHOOLBAS KOONWAR *v.* LALLA JOGESHUR SAHOY...**L. Rep. 3 I. A. 7 ; I. L. Rep. 1 Cal. 226.**

SURAJ BUNSI KOER *v.* SHEO PURSHAD SINGH ..**L. R. 6 I. A. 88.**

See **Hindu Law—Liability of Ancestral Property in the hands of the Heirs for the Debts of the Ancestors.**

NARAIN *v.* NARSO...**I. L. Rep. 1 Bom. 262.**

See **Hindu Law—Undivided Family. 9.**

NARSINBHAT *v.* CHENAPPA...**I. L. Rep. 2 Bom. 479.**

—— Mortgage of — by Father — Mitakshara Law—Purchaser at Execution Sale, with Notice of Co-Sharers' Claims—Effect of Execution Sale on Share of Deceased Judgment Debtor.

Digitized by Google

ANCESTRAL PROPERTY—*contd.*

See **Hindu Law—Alienation of Ancestral Property. 4.**

SURAJ BUNSI KOER *v.* SHEO PURSHAD SINGH...**L. Rep. 6 I. A. 88.**

—— Mortgage of—by Father during Son's Minority—Suit to Enforce Mortgage—*Onus Probandi.*

See **Onus Probandi. 7.**

BHEEKNARAIN *v.* JANUK.....**I. L. Rep. 2 Cal. 438.**

—— Partition of—does not destroy its Ancestral Character.

See **Onus Probandi. 8.**

ADURMONI *v.* CHOWDHRY SIB NARAIN.....**I. L. Rep. 3 Cal. 1.**

—— Partition of—Right of Sons to Compel—

See **Hindu Law—Partition. 1. 13.**

KALI PARSHAD *v.* RAM CHARN... **I. L. Rep. 1 All. 159.**

SURAJ BUNSI KOER *v.* SHEO PERSHAD SINGH...**L. Rep. 6 I. A. 88, 100.**

—— Sale of—in Execution of Decree against Father.

See **Hindu Law—Alienation of Ancestral Property. 2.**

GIRDHAREE LALL *v.* KANTO LALL. **L. Rep. 1 I. A. 321.**

—— Sale of—in Execution of Decree against Member of Undivided Family.

See **Bombay Act V. of 1862. 1.**

ARDASIR *v.* MUSE...**I. L. Rep. 1 Bom. 601.**

See **Civil Procedure Code, Act VIII. of 1859, § 269.**

KALAPA *v.* VENKATESH...**I. L. Rep. 2 Bom. 676.**

See **Hindu Law—Alienation of Ancestral Property. 1. 2. 3. 4. 5.**

BHIKAN DAS *v.* PURA...**I. L. Rep. 2 All. 141.**

GIRDHAREE LAL. *v.* KANTOO LAL. **L. Rep. 1 I. A. 321.**

MUSST. PHOOLBAS *v.* LALLA JOGESHUR.....**L. Rep. 3 I. A. 7; I. L. Rep. 1. Cal. 226.**

SURAJ BUNSI KOER *v.* SHEO PARSHAD SING...**L. Rep. 6 I. A. 88.**

ANCESTRAL PROPERTY—*contd.*

JALLIDAR SING *v.* RAM LALL...**L. Rep. 4 Cal. 723.**

See **Hindu Law—Liability of Ancestral Property in the hands of the Heirs for the Debts of the Ancestors.**

NARAYAN ACHARYA *v.* NARSO KRISHNA...**I. L. Rep. 1 Bom. 262.**

See **Hindu Law—Undivided Family. 3. 4. 7. 8.**

DEENDAYAL *v.* JUGDEEP NARAIN... **I. L. Rep. 4 I. A. 247; I. L. Rep. 3 Cal. 198.**

RAI NARAIN DAS *v.* NOWNIT LAL... **I. L. Rep. 4 Cal. 809.**

LUCHMI DAI KOER *v.* ASMAN SINGH.....**I. L. Rep. 2 Cal. 213.**

BABAJI *v.* VASADEV...**I. L. Rep. 1 Bom. 95.**

See **Sale in Execution of Decree. 10. 15.**

VENKATARAMAYYAN *v.* VENKATASUBRAMANIYA...**I. L. Rep. 1 Mad. 358.**

VENKATASAMI NAIK *v.* KUPPAIYAN. **Ibid. 354.**

—— Sale of—by Father in Discharge of his Debts.

See **Hindu Law—Alienation of Ancestral Property. 2.**

GIRDHAREE LALL *v.* KANTOO LALL. **L. Rep. 1 I. A. 321.**

—— Sale of—by Father during Son's Minority—Suit to set aside.

See **Onus Probandi. 8.**

ADURMONI *v.* CHOWDHRY SIB NARAIN.....**I. L. Rep. 3 Cal. 1.**

See **Hindu Law—Alienation of Ancestral Property. 7.**

CHAMAILI KUAR *v.* RAM PRASAD... **I. L. Rep. 2 All. 267.**

ANCESTRAL TRADE—Carried on on behalf of Undivided Family—Insolvency of Manager—Widow's Right to Maintenance.

See **Hindu Law—Maintenance of Widow. 9.**

JOHURRA *v.* SREEGOPAL.....**I. L. Rep. 1 Cal. 470.**

Digitized by Google

ANCESTRAL TRADE—*contd.*

—— Carried on on behalf of Infants—Liability of Infants for Debts.

See **Hindu Law—Ancestral Trade.**

JOYKISTO *v.* NITTYANUND.....**I. L. Rep. 3 Cal. 783.**

ANCIENT DOCUMENTS—Presumption as to Due Execution of.

See **Evidence. 17.**

UBILACK RAI *v.* DALLIAL RAI...**I. L. Rep. 3 Cal. 557.**

ANCIENT LIGHTS—Obstruction to.

See **Mandatory Injunction.**

JAMNADASS *v.* ATMARAM .....**I. L. Rep. 2 Bom. 133.**

ANNUITY—Probate Duty—"Value"—Court Fees' Act VII. of 1870, Sched. I., Cl. 11.

See **Probate Duty. 1.**

RAMCHANDRA LAKSHMANJI...**I. L. Rep. 1 Bom. 118.**

ANNUITY CHARGED ON TESTATOR'S ESTATE—Deduction of Capitalized Value of—in estimating Probate Duty.

See **Court Fees. 9.**

RUSHTON...**I. L. Rep. 3 Cal. 736.**

APPEAL—CIVIL—Abatement of.

See **Abatement of Appeal—Civil.**

MORESHWAR *v.* KUSHABA.....**I. L. Rep. 2 Bom. 248.**

—— Act XXVII. of 1860, § 6—Appeal from Result of, or Omission to make, an Inquiry under.

See **Appeal—Civil. 1.**

—— Act XXVII. of 1860—Security—Appeal.

See **Appeal—Civil. 4. 16.**

—— Adding Parties to Record after Appeal Barred.

See **Parties to Suit. 8.**

THE COURT OF WARDS *v.* GAYA PARSAD...**I. L. Rep. 2 All. 107.**

—— Admission of Time-barred.

See **Time-barred Appeal.**

DABEY SAHAI *v.* GANESH LAL...**I. L. Rep. 1 All. 34.**

ZAIBULNISSA BIBI *v.* KULSUM BIBI. **I. L. Rep. 1 All. 250.**

See **Oudh Talukdars' Relief Act XXIV. of 1870, § 10.**

RAMJISDAS *v.* RAJA BHAGWAN BAX. **L. Rep. 5 I. A. 197.**

APPEAL—CIVIL—*contd.*

—— Admission of Unstamped or Insufficiently Stamped Documents.

See **Appeal—Civil. 20.**

And **Error not affecting the Merits. 1.**

AFZAL-UN-NISSA *v.* TEJ BAN...**I. L. Rep. 1 All. 725.**

—— Agreement not to.

See **Contract. 7.**

ANANT DAS *v.* ASHBURNER & Co... **I. L. Rep. 1 All. 267.**

—— from Answers by a Full Bench.

See **Hindu Law—Alienation of Ancestral Property. 3.**

MUSST. PHOOLBAS *v.* LALLA JOGESHUR...**L. Rep. 3 I. A. 7; I. L. Rep. 1 Cal. 226.**

—— against Assessment by Municipal Commissioner under Beng. Act III. of 1864, § 33.

See **Beng. Act III. of 1864, § 33.**

MANESSUR DASS *v.* THE COLLECTOR, &C., OF CHAPRA..**I. L. Rep. 1 Cal. 409.**

—— by Auction Purchaser at Execution Sale, against Order setting aside Sale.

See **Appeal—Civil. 22.**

—— Award—Judgment according to.

See **Arbitration. 4. 6.**

BOONJAD MATHOOR *v.* NATHOO SHAHOO..**I. L. Rep. 3 Cal. 375.**

VISHNU *v.* RAVJI.....**I. L. Rep. 3 Bom. 18.**

—— Award—Order directing Award to be Filed.

See **Appeal—Civil. 13. 13a.**

—— Award—Refusal to Confirm.

See **Appeal—Civil. 35.**

—— as to Costs—Mortgagee's Costs Refused for Usury—Appellate Court will not interfere.

See **Costs. 1.**

CARVALHO *v.* NURBIBI...**I. L. Rep. 3 Bom. 202.**

—— as to Costs—Suit for Defamation—Nominal Damages—Plaintiff ordered to pay Defendant's Costs—Order not Illegal—No Special Appeal.

See **Costs. 2.**

FULUCK *v.* MOHENDER.....**I. L. Rep. 1 Cal. 385.**

Digitized by Google

APPEAL—CIVIL—*contd.*

—— Custom set up in.

See **Pre-emption. 10. 12.**

CHADAMI LAL *v.* MUHAMMAD BAKSH...**I. L. Rep. 1 All. 563.**

MARATIB ALI *v.* ABDUL HAKIM... **I. L. Rep. 1 All. 567.**

—— Date of Presentation of—is Date of Institution for purpose of Limitation.

See **Appeal—Civil. 14.**

—— from Decision on one of several Issues.

See **Letters Patent (1865), (Calcutta), § 15. 2.**

EBRAHIM *v.* FUCHRUNNISSA BEGUM...**I. L. Rep. 4 Cal. 531.**

—— from Decree in Accordance with Award of Arbitrators.

See **Arbitration. 4. 6.**

BOONJAD MATHOOR *v.* NATHOO SHAHOO. **I. L. Rep. 3 Cal. 375.**

VISHNU *v.* RAVJI ... **I. L. Rep. 3 Bom. 18.**

—— from Decree on Specially Registered Agreement under Act XX. of 1866, § 53.

See **Appeal—Civil. 7. 11. 12.**

—— to District Judge—Suit for Rent under Rs. 100—Question of Proprietary Right.

See **Act XVIII. of 1873, § 93. 3.**

BISHESHUR *v.* MUSAMAT SUGUNDHI.....**I. L. Rep. 1 All. 366.**

—— to District Judge—Value of Subject-matter in Dispute.

See **Bengal Civil Courts' Act VI. of 1871, § 22.**

KALI CHARAN RAI *v.* AJUDHIA RAI. **I. L. Rep. 2 All. 148.**

—— Extending Time.

See **Act XXVIII. of 1860.**

KRISHNAREDDI GOVINDAREDDI *v.* STUART. **I. L. Rep. 1 Mad. 192.**

See **Company—Winding up. 2.**

LALLAH BARROOMAL *v.* THE OFFICIAL LIQUIDATOR...**I. L. Rep. 4 al. 704.**

—— from Judgment of Division Bench.

See **Letters Patent—Allahabad—Cl. 10. 1.**

GHASI RAM *v.* MUSAMAT NURAJ BEGAM...**I. L. Rep. 1 All. 31.**

APPEAL—CIVIL—*contd.*

—— from Judgment *Ex-Parte* and Order refusing to Set aside same.

See **Appeal—Civil. 2. 19.**

—— from Judgment *Ex-Parte* against Defendant who does not appear at the Adjourned Hearing of a Suit.

See **Civil Procedure Code, Act VIII. of 1859, § 119. 1.**

ZAIN-UL-ABDIN *v.* AHMAD RAZA. **I. L. Rep. 2 All. 67; L. Rep. 5 I. A. 233.**

—— from Judgment *Ex-Parte* in Appeal.

See **Appeal—Civil. 6. 28.**

—— Jurisdiction—Course for Appellate Court to adopt when it decides Lower Court had not.

See **Appeal—Civil. 3.**

—— Limitation—Computation of Period of—Time necessary to obtain Copies of Judgment appealed against.

See **Letters Patent—Allahabad—Cl. 10. 2.**

FAZAL MUHAMMAD *v.* PHUL KUAR. **I. L. Rep. 2 All. 192.**

—— Limitation—Return of Memorandum for Amendment.

See **Appeal—Civil. 14.**

—— Memorandum of—Grounds not taken in.

See **Appeal—Civil. 8.**

—— Notice of—Act X. of 1866, § 141.

See **Company—Winding up. 2.**

LALLAH BARROOMUL *v.* THE OFFICIAL LIQUIDATOR...**I. L. Rep. 4 Cal. 704.**

—— Objection not Raised in Courts below.

See **the Index heading Objection not Raised in Court below.**

—— Objection not Raised in Memorandum of Appeal.

See **Appeal—Civil. 8.**

—— From Orders.

See **Appeal from Orders.**

—— Party to the Suit—Alleged Purchaser of Decree.

See **Act XXIII. of 1861, § 11. 1.**

SOBHA BIBEE *v.* MIRZA SAKHAMUT ALI...**I. L. Rep. 3 Cal. 371; 1 Cal. Rep. 331.**

Digitized by Google

APPEAL—CIVIL—*contd.*

—— Party to the Suit—Purchaser of Decree—Application by, to execute.
See **Appeal—Civil. 9.**

—— from Refusal to Grant a Certificate under Act XXVII. of 1860.
See **Appeal—Civil. 1.**

—— by Respondent from Judgment *Ex-Parte* in Appeal.
See **Appeal—Civil. 6.**

—— Revival of Right of—on Compromise being set aside.
See **Revival of Right of Appeal.**
RANEE KHUJOOROONISSA *v.* MUSST. ROUSHUN JEHAN...**L. Rep. 3 I. A 291; I. L. Rep. 2 Cal. 184.**

—— Second Appeal—Absence of Notice of Action—Plea of.
See **Act XV. of 1873. 1.**
MUNICIPAL COMMITTEE OF MORADABAD *v.* CHATRI SINGH...**I. L. Rep. 1 All. 269.**

—— Second Appeal as to Costs.
See **Costs. 2.**
FULUK *v.* MOHENDER...**I. L. Rep. 1 Cal. 385.**

—— Second Appeal—Evidence, Power of High Court to Consider.
See **Contract. 16.**
NANAK *v.* MAHIN...**I. L. Rep. 1 All. 487.**
See **Enhancement of Rent. 3.**
MEER MAHOMED *v.* FORBES...**L. R. 2 I. A. 1; 22 W. R. 316.**

—— Second Appeal—*Ex-Parte* Decree—Rehearing Granted after time Limited.
See **Civil Procedure Code, Act VIII. of 1859, § 119. 2.**
RUNGLALL *v.* TOKHUN ... **I. L. Rep. 2 Cal. 114.**

—— Second Appeal—from Judgment *Ex-Parte* in Appeal.
See **Appeal—Civil. 6. 27.**

—— Second Appeal—Objection not Raised in Court Below.
See **The Index heading Objection not Raised in Court below.**

—— Second Appeal—from Order in Execution.
See **Appeal—Civil. 27. 29.**

APPEAL—CIVIL—*contd.*

—— Second Appeal—from Order Returning Plaint.
See **Appeal—Civil. 26.**

—— Second Appeal—by Purchaser from Defendant after Adverse Decree.
See **Abatement of Appeal—Civil.**
MORESHWAR *v.* KUSHABA...**I. L. Rep. 2 Bom. 248.**

—— Second Appeal in Suits Cognizable by Small Cause Court.
See **Appeal—Civil. 32.**
See **The Cases under Small Cause Court—Mofussil.**

—— Security under Act XXVII. of 1860.
See **Appeal—Civil. 4. 16.**

—— Security for Costs—Extending Time for Deposit of.
See **Security for Costs. 1.**
HAIDRI BAI *v.* THE E. I. RY. CO... **I. L. Rep. 1 All. 687.**

—— Security for Costs of—Poverty no Ground for requiring.
See **Security for Costs. 2.**
MANEKJI *v.* GOOLBAI...**I. L. Rep. 3 Bom. 241.**

—— by Some of Several Defendants—Grounds common to all.
See **Contribution. 1.**
HIRA CHAND *v.* ABDAL...**I. L. Rep. 1 All. 455.**

—— Suit Filed before Act X. of 1877—Decision passed after that Act.
See **Appeal—Civil. 21.**

—— Suit Filed before Act X. of 1877—Decision passed before that Act.
See **Appeal—Civil. 9.**

—— Suit for Rent under Rs. 100.
See **Appeal—Civil. 33.**
See **Act XVIII. of 1873, § 93. 3.**
BISHESHUR SINGH *v.* MUSAMAT SUGUNDI...**I. L. Rep. 1 All. 366.**

—— In Suits tried in the Sonthal Pergannas.
See **Jurisdiction. 11.**
SURDHAREE LALL *v.* MANSOOR ALLY KHAN...**I. L. Rep. 3 Cal. 298.**

Digitized by Google

APPEAL—CIVIL—*contd.*

—— Time-barred—Admission of.

See **Time-barred Appeal.**

DUBEY SAHAI *v.* GANESH LALL...**I. L. Rep. 1 All. 34.**

ZAIBULNISSA BIBI *v.* KULSUM BIBI. **I. L. Rep. 2 All. 510.**

See **Oudh Talukdars' Relief Act XXIV. of 1870, § 10.**

RAMJISDAS *v.* RAJAH BHAGWAN BAX...**L. Rep. 5 I. A. 197.**

1. —— *Act XXVII. of* 1860, § 6.] *A.* applied for a certificate under Act XXVII. of 1860. *B.* opposed the application, having herself applied for a certificate. A question having arisen as to *B.*'s identity, an inquiry was commenced by the Judge, and the matter adjourned for the examination of certain witnesses on commission. Before their evidence was taken, the Judge, on reconsideration, being of opinion that he had sufficient evidence to enable him to decide the case, refused to grant a certificate to *A.*, who appealed to the High Court:—

Held, that the appeal lay. An appeal lies from the result of an inquiry, or omission to make an inquiry, under the Act. Section 6 of the Act recognizes and declares the power of the High Court to superintend the proceedings of the District Court, and enables parties to have the benefit of that superintendence by way of appeal. The proceedings were accordingly sent back to the District Court in order that the inquiry should be completed. TARINI CHURN BROHMO *v.* BAMASOONDEREE DOSSEE...*Jackson* and *Mitter*, JJ...**I. L. Rep. 1 Cal. 128, 1873.**

2. —— *Appeal against an* Ex-parte *Decree, and Order refusing to set the same aside—Civil Procedure Code, Act X. of* 1877, §§ 540, 591.] In the provisions relating to the setting aside of *ex-parte* decrees, the new Civil Procedure Code, Act X. of 1877, departs from the provisions contained in the Code of 1859. This latter, by § 119, expressly prohibited appeals against *ex-parte* decrees. The former does not contain any such prohibition; and § 540 is wide enough to sanction such appeals.

In omitting from § 591 of the new Code the words "prior to decree" which were in § 363 of the old Code, the intention of the Legislature would appear to have been to allow the defendant, when appealing, as he has a right to do, against the *ex-parte* decree, to appeal also against the order, made after decree, refusing to set the decree aside. This is probably the reason why no special provision was made in § 588 for an immediate appeal in cases of this kind, as it would be useless to give a right of appeal against the order of refusal, unless there was also given an appeal against the decree. An appeal, therefore, against a decree passed *ex-parte* against the defendant, in a suit on a promissory note under the provisions of Chapter XXXIX. of the Civil Procedure Code of 1877, and against an order refusing to set aside such decree, admitted. LACKMIDASS VITHALDAS *v.* EBRAHIM OSMAN. *Westropp*, C.J., and *Bayley*, J...**I. L. Rep. 2 Bom. 644, 1878.**

See infra. **19. 28.**

3. —— *Jurisdiction, Want of—Course for Appellate Court to adopt.*] Where the Appellate Court decides that the Lower Court had no jurisdiction to entertain the suit, it should return the plaint to the plaintiff in order that he may present it to the proper Court. BAI MAKHOR *v.* BULAKHI CHALHI. *Kemball* and *N. Harridass*, J.J.....**I. L. Rep. 1 Bom. 588, 1874.**

S. C. under **Jurisdiction. 19.**

4. —— *Act XXVII. of* 1860, § 6—*Deposit of Security by Person entitled to Certificate.*] No appeal lies under Act XXVII. of 1860 on a question of taking security from a person who has been declared entitled to a certificate under the Act. MONMOHINEE DASSEE *v.* KHATTER GOPAUL DEY. *Glover* and *Mitter*, JJ...**I. L. Rep. 1 Cal. 127, 1875.**

See In the matter of the Petition of RUKMIN...**I. L. Rep. 1 All. 287,** *infra.* **16.**

5. —— *Execution of Decree—Proceedings commenced under Act VIII. of* 1859—*Sale in Execution after Act X. of* 1877 *in force.*] Proceedings, to execute a decree commenced while Act VIII. of 1859 was in force; but property of the judgment-debtor was sold in pursuance of those proceedings after Act X. of 1877 came into operation. Subsequently, the judgment-debtor applied to have the sale set aside, on the ground of irregularity in conducting the sale, and this application was granted.

Held, that the application for execution having been made while Act VIII. of 1859 was in force, the proceedings under it would, according to the provisions of Act I. of 1868, be governed by Act

Digitized by Google

APPEAL—CIVIL—*contd.*

VIII. of 1859, notwithstanding the appeal, and that the application to set aside the sale was so intimately connected with the proceedings in execution, that it must be regarded as a part of those proceedings. The sale was made under the old law, and the purchaser bought subject to these conditions, and suffered no hardship in having them applied to him. The order, therefore, setting aside the sale was governed by the former Code, and was not subject to appeal. CHINTO JOSHI *v.* KRISHNAJI NARAYAN. *West* and *Pinhey*, JJ.....**I. L. Rep. 3 Bom. 214, 1879.**

See infra. **9. 27. 29.**

6. —— *By Respondent from Judgment* ex-parte *in Appeal—Act VIII. of* 1859, § 119.] Section 119 of Act VIII. of 1859 applies only to the case of a defendant who does not appear in the Court of first instance, and not to that of a respondent who does not appear in a lower Court of Appeal; who is, therefore, not precluded by his non-appearance in such Court from preferring an appeal to the High Court from a decision passed against him *ex-parte* in the Lower Appellate Court. KALI KISHORE ROY *v.* DHUNUNJOY ROY. *Garth*, C. J., and *Birch*, J...**I. L. Rep. 3 Cal. 228, 1877.**

S. C. under **Limitation. 65.**

7. —— *Registration Act XX. of* 1866, §§ 52, 53—*Decree—Execution.*] There is no appeal from a decree, nor from orders passed in execution of a decree, obtained under § 53 of Act XX. of 1866 upon an agreement specially registered under § 52 of that Act.

Hurnath Chatterjee v. *Futtick Chunder Summadar* (18 W. Rep. 512), *Radha Kristo Dutt* v. *Gunga Narain Chatterjee* (23 W. Rep. 328), *Huro Soonduree Debia* v. *Punchoo Ram Mundul* (24 W. Rep. 225), followed :—

BHYRUB CHUNDER *v.* GOLAP COOMARY. *Kemp* and *Morris*, JJ.....**I. L. Rep. 3 Cal. 517, 1878.**

See RAMANAND *v.* BANK OF BENGAL...**I. L. Rep. 1 All. 377.**

And WILAYAT-UN-NISSA *v.* NAJIBUN-NISSA...**Ibid. 583.** *Infra.* **11** and **12.**

8. ——*Practice—Ground of Appeal taken in Argument.*] Although, as a rule, the High Court will not allow grounds of appeal to be taken in argument which have not been taken in the Memorandum of Appeal, yet where a decree comes before it which is on its very face illegal, the Court is bound to take up the point itself and rectify the mistake. PORAN SOOKH CHUNDER *v.* PARBBUTTY DOSSEE. *Jackson* and *Kennedy*, JJ.....**I. L. Rep. 3 Cal. 612, 1878.**

S. C. under **Declaratory Decree. 13.**

9. —— *Act X. of* 1877, §§ 3, 540, 591, 647—*Act I. of* 1868, § 6—*Decree—Judicial Proceedings—Procedure—Letters Patent (Calcutta)*, 1865, *Cl.* 16.] In all suits instituted before Act X. of 1877 came into force, in which an appeal lay to the High Court under Act VIII. of 1859, an appeal still lies, notwithstanding the repeal of that Act by Act X. of 1877.

Per Garth, C.J.—A suit is a judicial proceeding, and the words "any proceeding" in § 6, Act I. of 1868, include all proceedings in any suit from the date of its institution to its final disposal, and include proceedings in appeal.

The word "procedure" in § 3 of Act X. of 1877 has not the same meaning as the word "proceedings" in Act I. of 1868, § 6.

The proceedings in any suit commenced before Act X. of 1877 came into operation, including a special appeal, if the old Civil Procedure Code allowed one, go on as before; but the procedure, or machinery by which those proceedings are conducted, is, after decree, to be that which is provided by the new Code, Act X. of 1877.

Ratanchand Shrichand v. *Hanmantrav Sadashiv* (6 Bom. H. C. Rep. A. C. J. 166) approved.

Per Jackson, J—The appeal given by § 588 of Act X. of 1877 applies to orders made under that Act, and to no others; and the finality given by the same section to appellate decisions of that nature is confined to orders passed in appeals under that section. The word "decree" in § 3 of Act X. of 1877 does not include orders, either original or appellate, upon matters arising in the course of a suit, or in execution of the decree.

The decision of the Appellate Court on an appeal from the original decree is, in truth, the result of the decision of the suit by that Court, and, therefore, comes at once within the definition of a "decree."

The "judicial proceedings" referred to in the same definition, are those provided for in § 647, and are altogether outside regular suits.

Digitized by Google

APPEAL—CIVIL—*contd.*

The power of the High Court of Calcutta to hear appeals from the Civil Courts in the interior is regulated by Act VI. of 1871. Section 6 of Act I. of 1868 covers specific proceedings taken in execution of a decree which have been commenced before Act X. of 1877 came into force. The effect of that section and of § 3 of Act X. of 1877 is, (1) that the procedure in suits instituted after Act X. of 1877 came into force will be wholly subject to its provisions; (2), the proceedure in suits commenced before that Act came into force and pending at that time will be regulated by the previous law up to decree, and by that Act after decree; and (3), the procedure after decree in suits determined before Act X. of 1877 came into force, would thereafter be governed entirely by the Act as to new proceedings but not as to proceedings already commenced.

Per Markby and *Mitter*, JJ.—No appeal lies, under Act X. of 1877, from an order passed before that Act came into force, rejecting an application under § 208 of Act VIII. of 1859, by the purchaser of a decree, to be allowed to execute the decree. Nor will such an appeal lie under Cl. 16 of the Letters Patent (Calcutta), 1865, as that clause only empowers the High Court at Calcutta to hear appeals in such cases as were subject to appeal to the High Court by virtue of any laws or regulations then in force; and such an appeal would not have lain under either Act VIII. of 1859, or Act XXIII of 1861, § 11.

But notwithstanding the repeal of this latter enactment by Act X. of 1877, an appeal will lie to the High Court (Calcutta), under Cl. 16 of the Letters Patent (Calcutta), 1865, from an order passed in execution of a decree before Act X. of 1877 came into operation, from which an appeal lay to the High Court under the provisions of Acts VIII. of 1859, and XXIII. of 1861, and where there is nothing in Act X. of 1877 expressly prohibiting such an appeal. The power of the High Court to hear an appeal carries with it, as a necessary consequence, the right to an appellant to present to that Court a petition of appeal. RUNJIT SINGH *v.* MEHERBAN KOER...**I. L. Rep. 3 Cal. 662; 2 Cal. Rep. 391, 1878, F. B.**

See **5. 27. 29.**

10.——*Registration Act VIII. of* 1871, § 76—*Act III. of* 1877, § 2—*Act I. of* 1868, § 6—*Refusal to register.*] On the 23rd of August 1872, an order was passed rejecting an appeal against an order refusing to register a deed; and while Act VIII. of 1871 was in force an application for a review of this order was presented, and finally rejected on the 20th December 1877, after Act VIII. of 1871 had been repealed by Act III. of 1877:—

Held, that by the provision of § 6 of Act I. of 1868, the repeal of Act VIII. of 1871 did not affect any proceedings commenced before the repealing Act III. of 1877 came into operation; and that the proceedings in the present case, therefore, must be governed by the provisions of the Act in force at the time they were instituted—namely, Act VIII. of 1871; and by § 76 of that Act no appeal lay from the order complained of. SYUD MAHOMET HOSSEIN *v.* HADZI ABDULLAH. *Ainslie* and *McDonell*, JJ....**I. L. Rep. 3 Cal. 727, 1878.**

11. —— *Act XX. of* 1866, § 52—*Act VIII. of* 1859, § 273—*Execution—Act VIII. of* 1871.] No appeal lies against orders passed in execution of decrees under Act XX. of 1866, the procedure under that Act having been expressly saved by Act VIII. of 1871 which repealed Act XX. of 1866. RAMANAND *v.* THE BANK OF BENGAL. *Stuart*, C.J., and *Oldfield*, J...**I. L. Rep. 1 All. 377, 1877.**

Overruled by

WILAYAT-UN-NISSA *v.* NAJIB-UN-NISSA... **Ibid. 583,** *infra* **12.**

12. —— *Execution of Decree on Specially Registered Bond—Act XX. of* 1866, § 53—*Appeal—Act IX. of* 1871, *Sched. II., Art.* 167.] *Held*, by *Pearson*, *Turner*, and *Spankie*, JJ., that an appeal lies from an order passed in the execution of a decree obtained under the provisions of § 53 of Act XX. of 1866 on a bond specially registered under § 52 of that Act.

Ramanand v. *The Bank of Bengal* (I. L. Rep. 1 All. 377) overruled.

By *Stuart*, C.J.—The provisions in § 53 of Act XX. of 1866, that "such decree may be enforced forthwith under the provisions for the enforcement of decrees contained in the Code of Civil Procedure," lets in the Code *so far as the enforcement of decrees* made under that portion of Act XX. of 1866, is concerned, but it is not the law that § 53 lets in and enforces the *whole* provisions of Act VIII. of 1859 relating to execution of decrees. To hold otherwise would be, in effect, to render nugatory § 55 of Act XX.

Digitized by Google

APPEAL—CIVIL—*contd.*

of 1866, which provides that there shall be *no appeal* against any decree or order made *under §§ 53, 54, or this section.*" *To that extent*, therefore, this section forbids the application of the Code of Civil Procedure, that is, so far as *appeals* are concerned.

Per Turner, J.—Art. 167 of Sched. II. of Act IX. of 1871 applies to decrees obtained under the special provisions of Act XX. of 1866. WILAYUT-UN-NISSA *v.* NAJIB-UN NISSA...**I. L. Rep. 1 All. 583, 1878, F. B.**

See BHYRUB CHUNDER *v.* GOOLAB COOMARY...**I. L. Rep. 3 Cal. 517.**
Supra. 7.

13. —— *Act VIII. of* 1859, § 327 — *Order directing Award to be filed.*] The plaintiff applied, under § 327 of Act VIII. of 1859, to file and enforce an award made upon a reference to arbitration without the intervention of the Court. The defendant denied referring the matter decided by the award, to arbitration, or any knowledge of the arbitration proceedings; but the Court to which the application was made, after taking evidence, decided that the reference was made by an authorized agent of the defendant and with the defendant's knowledge, and accordingly ordered the award to be filed, but did not pass any decree enforcing the award:—

Held, following *Jokhun Rai* v. *Bucho Rai* (H. C. Rep. N. W. P., 1868, p. 353,) that no appeal lay from the order directing the award to be filed, as it did not operate as a decree.

Per Spankie, J.—Section 327 of Act VIII. of 1859 was intended to apply only to those cases in which a reference to arbitration is admitted and in which an award has been made. Where one of the parties denies that he had referred any dispute to arbitration, or that an award had been made between himself and the other party, that is sufficient cause why the award should not be filed. The applicant for its admission should be left to bring a regular suit for the enforcement of the award. HUSSAINI BIBI *v.* MOHSIN KHAN. *Spankie* and *Oldfield*, JJ...**I. L. Rep. 1 All. 156, 1876.**

S. C. under **Arbitration. 5.**

Doubted by *Stuart*, C. J., in JANKI TEWARI *v.* GAYAN TEWARI...**I. L. R. 3 All. 427, Vol. 2, Col. 76.**

APPEAL—CIVIL—*contd.*

13a.—— *Order directing Award to be filed — Act X. of* 1877, §§ 520 *to* 522, 525, 526, 528.] In a suit by the plaintiff, claiming under § 525 of Act X. of 1877, that an award made on a private reference to arbitration should be filed in Court, the Court of first instance holding that there was no reason to remit the award for the reconsideration of the arbitrator, under § 520, or to set it aside under § 521 of that Act, did not proceed to give judgment according to such award followed by a decree, but merely directed that the award should be filed:—

Held, that the order was not appealable as an order or as a decree. RAMADHIN *v.* MAHESH. *Stuart*, C.J., and *Oldfield*, J...**I. L. Rep. 2 All. 471, 1879.**

14.—— *Act VIII. of* 1859, § 336—*Appeal when instituted—Limitation.*] Where under the provisions of Act VIII. of 1859, § 336, a memorandum of appeal is returned for the purpose of being corrected, the Appellate Court should specify a time for such correction.

Where an appellant presented an appeal within the period of limitation, and the Appellate Court returned the memorandum of appeal for correction, without specifying a time for such correction, and the amended memorandum was presented some days after the period of limitation:—*Held*, that the appeal was within time, the date of the presentation of the appeal being the date on which it was first presented. JAGAN NATH *v.* LALMAN. *Turner* and *Spankie*, JJ. ...**I. L. Rep. 1 All. 260, 1876.**

15.——*Decree—Judgment.*] The plaintiffs claimed, as heirs of *G.*, possession of certain lands from the defendants, alleging that *G.* had mortgaged them to the defendants, and that the debt had been satisfied from the usufruct. The defendants denied that the plaintiffs were the heirs of *G.*, and asserted that they themselves were *G.*'s heirs and held the land in suit as such, having originally held them under the mortgage, which they alleged was not satisfied from the usufruct. The Court of first instance found that the plaintiffs were the heirs of *G.*, but dismissed the suit on the ground that the mortgage-debt had not been satisfied. The decree "ordered that the plaintiffs' suit be dismissed in its present form."

The lower Appellate Court dismissed an appeal by the defendants impugning the decision that the plaintiffs were the heirs of *G.*, on the

Digitized by Google

APPEAL—CIVIL—*contd.*

ground that the appeal was against the decision and not against the decree of the Court of first instance, referring to *Pan Koer* v. *Bhugwat Koer* (H. C. Rep. N. W. P., 1874, p. 10). *Held*, on special appeal, that that decision did not apply, and that the defendants were entitled to appeal. RAM GHOLAM *v.* SHEO TAHAL. *Turner* and *Spankie*, JJ...**I. L. Rep. 1 All. 266, 1876.**

16.—— *Act XXVII. of* 1860—*Security.*] No appeal lies from an order of a District Court requiring security from a person to whom it has granted a certificate to collect debts under Act XXVII. of 1860.

Soonea v. *Ram Suha* (H. C. Rep. N. W. P., 1870, p. 146,) and *Monmohinee Dassee* v. *Khetter Gopaul Dey* (I. L. Rep. 1 Cal. 127) followed.

Semble, the District Judge can review his order relating to the amount of the security.

In the matter of the Petition of RUKMIN. *Turner* and *Spankie*, JJ...**I. L. Rep. 1 All. 287, 1876.**

See MONMOHINEE DASSER *v.* KHATTER GOPAUL DEY.....**I. L. Rep. 1, Cal. 127**, *ante* **4.**

17.—— *Act VIII. of* 1859, § 254—*Sale in Execution—Defaulting Purchaser—Letters Patent (Allahabad), Cl.* 10.] An appeal lies from an order passed on an application under § 254 of Act VIII. of 1859, to make a defaulting purchaser liable for the loss occasioned by the re-sale.

Held (*Spankie*, J., dissenting) that ordinarily where an appeal is given it must be taken to be a general appeal, and express language should be used to restrict it. For this reason, and because the construction of a doubtful term which appears to accord best with the context ought to be accepted, it must be held that the appeal given to the Full Court by Cl. 10 of the Letters Patent of the Allahabad High Court from the judgment of two or more Judges of the Court or of a Division Court, "wherever" such Judges are equally divided in opinion, &c., is not confined to the point on which the judges of the Division Bench differ.

RAM DIAL *v.* RAM DAS...**I. L. Rep. 1 All. 181, 1876, F. B.**

18.—— *Application for Leave to sue as a Pauper—Act X. of* 1877, §§ 2, 540, 588.] No appeal lies under Act X. of 1877 from an order made under that Act rejecting an application for permission to sue as a pauper. Such an order, though embodying the result of a judicial proceeding, is not a decree within the meaning of §§ 2 and 540 of that Act. The judicial proceedings referred to in § 2 are proceedings of a different character from those which result in the order specified in § 588, and in some degree resemble and partake of the character of a suit. COLLIS *v.* MANOHAR DAS...**I. L. Rep. 1 All. 745, 1878, F. B.**

19.—— *From Order rejecting Application to set aside* Ex-parte *Decree—Act X. of* 1877, §§ 2, 103, 108, 588.] Under Act X. of 1877, an *ex-parte* decree is appealable like any other decree, but no appeal lies under that Act from an order rejecting an application to set aside an *ex-parte* decree against a defendant. GULABH SINGH *v.* LACHMAN DAS...**I. L. Rep. 1 All. 748, 1878, F. B.**

See supra. **2.**

20.—— *Insufficiently Stamped Document.*] Where a document is admitted by the Lower Court as not requiring a stamp, its admissibility cannot be questioned in appeal. *Enayetoolla* v. *Shaikh Meajan* (16 W. Rep. 6) followed. KHOOB LALL *v.* JUNGLE SINGH. *McDonell* and *Broughton*, JJ...**I. L. Rep. 3 Cal. 787; 2 Cal. Rep. 439, 1878.**

See **Error not affecting the Merits. 1.**

AFZAL-UN-NISSA *v.* TEJ BAN...**I. L. Rep. 1 All. 725.**

21.—— *Suit under Act VIII. of* 1859—*Decree given after Repeal of that Act—Appeal.*] Where a suit has been instituted under Act VIII. of 1859, but decided after Act X. of 1877 had come into force, and an appeal is presented against such decision, § 3 of Act X. of 1877 distinctly indicates that such an appeal is to be governed by the law of procedure in force at the date of the presentation of the appeal. Where, therefore, an appeal in a such case has been dismissed under § 556 of Act X. of 1877, the appellant may apply for its re-admission under § 558; and if such re-admission is refused, he is entitled to an appeal under § 588 (*v*).

Burkut Hoosein v. *Majidoonissa* (3 C. L. Rep. 208) distinguished. ELAHI BUKSH *v.* MARACHOW. *Ainslie* and *Broughton*, JJ...**I. L. Rep. 4 Cal. 825; 3 Cal. 593, 1879.**

Digitized by Google

APPEAL—CIVIL—*contd.*

22.——*Appeal from Order setting aside Sale in Execution of Decree—Act X. of* 1877, §§ 32, 311, 312, 518 (*m*), 647.] Where upon an application by the judgment-debtor, under § 311 of Act X. of 1877, to set aside a sale in execution of a decree against him, the auction purchaser is made a party to the proceedings under §§ 32 and 647 of that Act, and appears and shows cause why the sale should not be set aside, he can appeal against the order setting aside the sale. *Kanthi Ram* v. *Bankey Lal* (I. L. R. 2 All. 396) followed. GOPAL SINGH *v.* DULAR KUAR, *Spankie* and *Straight*, JJ.....**I. L. Rep. 2 All. 352, 1879.**

23.——*Appeal from Order returning Plaint —Act X of* 1877, §§ 57 (*c*), 588 (*e*)—*Act XII. of* 1879, § 2.] Though § 57 of Act X. of 1877 contemplates a return of a plaint, should error be patent, when it is first presented, there is nothing in that section which forbids the return of a plaint at a later stage.

Where, therefore, after the issues were framed, the Court decided that it had no jurisdiction and "dismissed" the plaintiff's suit, at the same time ordering the plaint to be returned to the plaintiffs :—

Held, that though the Court had made use of the word "dismiss," it was clear, from the direction that the plaint was to be given back, that the Court stopped, and intended to stop, from further hearing of the suit, when it discovered that it had no jurisdiction. The Court, therefore, when it returned the plaint to be presented in the proper Court, was acting under § 57, Cl. (*c*), Act X of 1877, and the order returning the plaint under that section was appealable under § 588 of that Act, and did not come within the definition of decree in Act XII. of 1879, § 2, and therefore was not appealable from as a decree. ABDUL SAMAD *v.* RAJINDRO KISHOR SINGH. *Spankie* and *Straight*, JJ...**I. L. Rep. 2 All. 357, 1879.**

24.——*Appeal from Order in Execution of a Decree —Assignment of Decree—Cross-Decrees—Act X. of* 1877, §§ 2, 232, 233, 246, 540.] An order made in the execution of a decree disallowing the objections taken by the judgment-debtor to execution of the decree, being the final order in a judicial proceeding, and therefore a decree within the meaning of § 2 of Act X. of 1877 is appealable under that Act. *Thakur Prasad* v. *Ahsan Ali* (I. L. Rep. 1 All. 668) followed.

APPEAL—CIVIL—*contd.*

MURLI DHAR *v.* PARSHOTAM DAS. *Pearson* and *Turner*, JJ.....**I. L. Rep. 2 All. 91, 1878.**

S. C. under **Execution of Decree. 8.**

25.——*Second Appeal—Objection as to Insolvency of Plaintiff taken for First Time on.*] Where the defendants for the first time in second appeal objected to the plaintiff's right to sue on the ground of his having taken the benefit of the Insolvent Debtors' Act, the objection was entertained by the High Court on the plaintiff's admission of his insolvency. SADODIN *v.* SPIER. *Melvill* and *Kemball*, JJ...**I. L. Rep. 3 Bom. 437, 1879.**

S. C. under **Insolvency. 1.**

26.——*Appeal from Munsiff — Act VIII. of* 1859— *Act X. of* 1877, § 584 — *Return of Plaint.*] A suit to redeem an usufructuary mortgage of certain lands, valued at Rs. 150, the principal money secured by the mortgagee, was instituted in the Munsiff's Court. The defendants were summoned to appear on the day fixed for the hearing of the suit, and to produce their evidence. The defendants accordingly appeared, denied the mortgage, and set up a proprietary title to the land. The Munsiff subsequently returned the plaint to the plaintiff for presentation to the proper Court, holding that, looking to the nature of the defence, the suit must be regarded as one to recover possession of land, the value of which being more than Rs 1,000, he had no jurisdiction to entertain the suit, which ought to have been instituted in the Court of the Subordinate Judge. On appeal by the plaintiff, the Subordinate Judge confirmed the decision. On a second appeal by the plaintiff to the High Court :—

Held, that the Munsiff's order for the return of the plaint being passed after the suit had been admitted on the file, and the parties had been called on to produce their evidence, his order finally disposed of the suit, and was the legitimate subject of a regular appeal under Act VIII. of 1859, and the present appeal from the appellate decree of the lower Court was admissible under § 584 of Act X. of 1877. KALIAN DAS *v.* NAWAL SINGH. *Pearson* and *Spankie*, JJ...**I. L. Rep. 1 All. 620, 1878.**

S. C. under **Jurisdiction. 5.**

27.——*Execution of Decree — Appeal from Order—Act I. of* 1868, § 6—*Act VIII. of* 1859—*Act X. of* 1877—*Repeal— Pending Proceedings.*]

Digitized by Google

APPEAL—CIVIL—*contd.*

The chapter of the New Civil Procedure Code (Act X. of 1877) which deals with execution of decrees is prospective, and does not affect proceedings already commenced. While, then, proceedings in execution of decrees initiated after Act X. of 1877 came into operation must be governed by the provisions of that Code, the effect of § 6 of Act I. of 1868 is to leave proceedings initiated before Act X. of 1877 came into force to be dealt with under the provisions of the repealed Code (Act VIII. of 1859). Proceedings in execution of a decree, therefore, instituted under Act VIII. of 1859, are to be governed by the provisions of that Code, and an appeal will lie from all orders passed in such proceedings which under the provisions of that Act were appealable, the saving of "proceedings commenced" from the operation of a repealing Act by § 6 of Act I. of 1868, extending also to appeals from such proceedings.

Where, therefore, the holder of a decree for money applied for execution thereof by the attachment of certain moneys deposited in Court to the credit of the judgment-debtor, and the application was refused, on the 4th of June 1877, by the Court of first instance, on the ground that the decree directed the sale of certain immoveable property for the satisfaction of the sum decreed, and awarded no other relief, and such order was affirmed on appeal on the 4th of August 1877, and the decree-holder applied to the High Court on the 13th of November 1877, after Act X. of 1877 came into operation, for the admission of a second appeal from the order of the lower Appellate Court, on the ground that the decree had been misunderstood:—

Held, that the appeal was admissible under the repealed Act VIII. of 1859, under the provisions of § 6 of Act I. of 1868.

Held also, that though the provisions of § 647 of Act X. of 1877 are applicable to proceedings in execution of a decree, yet the last paragraph of § 3 of that Act is not to be extended to proceedings in execution.

Held also, that the provisions of § 588 of Act X. of 1877 do not embrace all the directions on the determination of proceedings which are termed "orders" in the Code, and that section in declaring that an appeal should lie from the orders mentioned therein, and from no other such orders, must be understood to mean orders of a similar nature to those specified, and not all

APPEAL—CIVIL—*contd.*

"orders" that might be passed under the Code. While, then, the provisions of Cl. (*j*) of § 588 allow an appeal from the orders made in the course of execution proceedings where an appeal is allowed from similar orders passed in the course of a suit, the provisions of § 647 declare that the procedure prescribed by the Act shall be followed (so far as applicable) in all proceedings other than suits and appeals; therefore, an appeal will lie in such proceedings from the order which is analogous to a decree in a suit. Applying the definition of "decree" to proceedings in execution of a decree, the formal order of the Court in which the result of the proceedings is embodied is a decree within the meaning of that term in the Code. It is therefore appealable in all cases in which a decree is appealable, and the procedure in such cases must be governed by the provisions of the chapters relating to appeals from decrees. The order in question, therefore, was also appealable, under Act X. of 1877. THAKUR PRASAD *v.* AHSAN ALI .....**I. L. Rep. 1 All. 668, 1878, F. B.**

And *see* **Appeal—Civil. 5. 9. 28.**

28.——*Act X. of* 1877, § 584—*Second Appeal from Judgment* Ex-parte *in Appeal.*] A defendant who obtains a judgment in his favour in the Court of first instance, and who on appeal by the plaintiff does not appear at the hearing of the appeal or present a petition for re-hearing, may, under Act X. of 1877, present a second appeal against the decree of the lower Appellate Court.

Per M. Ayyar, J.—It may be a question whether an appeal does not lie even from a judgment *ex-parte*, the restriction contained in § 119 of Act VIII. of 1859 being omitted in the corresponding § 108 of Act X. of 1877. *Ex p.* MADALATHA. *Kernan* and *M. Ayyar*, JJ...**I. L. Rep. 2 Mad. 75, 1878.**

29.——*Second Appeal from Order in execution of Decree—Act X. of* 1877, §§ 2, 3, 244, 584, 588—*Act I. of* 1868, § 6.] The Court executing a decree for the removal of certain buildings made an order in the execution of such decree directing that a portion of a certain building should be removed, as being included in the decree.

On appeal by the judgment-debtor, the lower Appellate Court, on 22nd September 1877, reversed such order.

Digitized by Google

APPEAL—CIVIL—*contd.*

Held, per Pearson, J., on appeal made on 30th May 1878 by the decree-holder from the order of the lower Appellate Court, that that order being a decree within the scope of the definition in § 2, Act X. of 1877, was appealable under § 584 of that Code, as well as under Act VIII. of 1859, notwithstanding its repeal, in reference to § 6 of Act I. of 1868. *Thakur Prasad* v. *Ahsan Ali* (I. L. Rep. 1 All. 668, F. B.) followed.

Per Stuart, C. J., (dissenting from *Thakur Prasad* v. *Ashan Ali, ubi supra*), that a second appeal did not lie. UDA BEGAM *v.* IMAM-UD-DIN. *Stuart*, C. J., and *Pearson*, J....**I. L. Rep. 2 All. 74, 1878.**

See also MURLI DHAR *v.* PURSHOTAM DAS..... **Ibid. 91.**

30. —— *Special Appeal—Point not raised in Lower Courts—Want of Possession in Plaintiff's Vendor.*] In a suit, between Hindus, to recover possession of certain lands sold to the plaintiffs, the defendant was not allowed to raise for the first time in special appeal the point that the plaintiffs' vendor, was not, at the time of sale to the plaintiffs, in possession of the land sold. RAMABAI *v.* APPA. *Westropp*, C.J., and *Kemball*, J.....**12 Bom. H. C. Rep. 13, 1874.**

MAHADAJI *v.* VYANKAJI..... **I. L. Rep. 1 Bom. 197.**

31. —— *Limitation—Remand—Special Appeal from Decision on Remand—Points not raised below.*] The defence of limitation cannot be raised for the first time after there has been a remand, and on special appeal from the decision of the Court which heard the case on remand.

Per Westropp, C. J.:—"Speaking for myself alone, I reserve the right to consider whether, even upon a special appeal where there has been no remand, I should follow *Salu* v. *Rajsangji* (2 Bom. H. C. Rep. 162) and *Davlata* v. *Beru* (4 Bom. H C. Rep. 197)." MORU PATLAJI *v.* GOPAL SATU. *Westropp*, C. J., *West* and *Pinhey*, JJ. .....**I. L. Rep. 2 Bom. 120, 1877.**

32. —— *Suit Cognizable by Small Cause Court—Question of Title—Act XXIII. of* 1861, § 27.] No special appeal lies to the High Court in a suit cognizable by the Small Cause Court, though a question of title to immoveable property has been incidentally raised and tried in the Court below. MOHESH MATTO *v.* SHEIK PIRA...**I. L. Rep. 2 Cal. 470; 1 Cal. Rep. 33, 1877, F.B.**

APPEAL—CIVIL—*contd.*

33. —— *Jurisdiction—Rent—Suit under Rs.* 100—*Beng. Act VIII. of* 1869, §§ 33, 34, *and* 102—*Act VIII. of* 1879, § 372.] *Held* (*Jackson*, J., dissenting), that no special appeal lies to the High Court from the decision of a District Judge in a suit for rent under Rs. 100, when no question of right to enhance or vary the rent of a ryot or tenant, nor any question relating to a title to land or to some interest in land as between parties having conflicting claims thereto, has been determined by the judgment. LUNGESSUR KOOER *v.* SOOKHA OJHA...**I. L. Rep. 3 Cal. 151; 1 Cal. Rep. 39, 1877, F. B.**

34. —— *Objection as to Want of Possession of Plaintiff's Vendor at Time of Sale not taken in Court below.*] In a suit to recover possession of certain lands sold to the plaintiff, the defendant was not allowed to raise for the first time in special appeal the point that the plaintiff's vendor, a Hindu, was not, at the time of sale to the plaintiff, in possession of the land sold. MAHADAJI *v.* VYANKAJI GOVIND. *Westropp*, C.J., and *West*, J.....**I. L. Rep. 1 Bom. 197, 1876.**

S. C. under **Registration. 13.**

35. —— *Appeal against refusal to Confirm an Award—Act VIII. of* 1859, §§ 325-327—*Privileged Communications—Evidence Act I. of* 1872, § 1.] In a suit referred to arbitration under Act VIII. of 1859, the arbitrator informed the parties that he had determined to award the plaintiff Rs. 1,500 with costs; but a few days afterwards, in consequence of a communication made by the defendant, the arbitrator held another meeting, at which the defendant for the first time contended, that as, before the matter was referred to arbitration, he had offered the plaintiff Rs. 1,500, he ought not to be made to pay the costs of the arbitration, and in support of his contention produced a letter written by the plaintiff's attorney to his attorneys, which was stated to be "without prejudice," and thereupon the arbitrator decided not to give the plaintiff costs. An application to confirm the award was refused by the Judge of the Court of first instance, on the ground that the defendant had improperly communicated with the arbitrator behind the back of the other party, and had used the letter written "without prejudice" to induce the arbitrator to alter his opinion.

Held, on appeal by the defendant, that the refusal of the Judge to give judgment on the award, was in point of fact a judgment upon the

Digitized by Google

APPEAL—CIVIL—*contd.*

whole subject-matter of the suit, and that an appeal would lie from such refusal.

Held also, that though the arbitrator was wrong in receiving and acting on and using as evidence a document which ought not to have been received, yet that this was not a sufficient ground to justify the Judge in refusing to confirm the award. HOWARD *v.* WILSON. *Garth*, C.J., and *Markby*, J.....**I. L. Rep. 4 Cal. 231, 1878; 2 Cal. Rep. 488.**

36. —— *Judgment—Decree.*] The plaintiff sued for possession of certain land, on the ground that he was the owner thereof in virtue of a purchase from *N.* The defendants claimed the land as owners, on the grouud that it was included in a garden which they had previously purchased at a sale in execution of a decree against *N.*, and they also urged that in a former suit between themselves and *N.* the land had been found to be part of that garden, and that the matter was, therefore, *res judicata* as between themselves and the plaintiff claiming through *N.* The Court of first instance held that the lands in question did not form part of the garden purchased at the execution sale, but that the defendants were in possession under a lease from *N.* which had not expired, and, therefore, that they could not be ejected. He also found that the matter was not *res judicata;* and by his decree "ordered that the plaintiff's claim as it stands at present be dismissed" :—

Held (*Straight*, J., dissenting), that the defendants were entitled, under § 540 of Act X. of 1877, to appeal from such decree.

Per Stuart, C. J.—It would be too narrow a view of the Code (Act X. of 1877) to hold that the decree, inasmuch as it was a decree, which so far as it decreed anything, did so in favour of the defendants, was not a decree by which the defendants could be said to be aggrieved. Not only the judgment, but the pleadings also, may be looked at to see what the decree really means where the decree is ambiguous or imperfect as to any essential particular. The present decree, though apparently favourable to the defendants, was imperfect and not self-explanatory; and when read by the light of the record of the pleadings and judgment was really unfavourable to them.

Per Spankie, J.—A decree which is materially defective, either from omission or otherwise, and which cannot be amended, is appealable on that ground alone; and the judgment may be referred to in order to determine the real meaning and effect of the decree. LACHMAN SINGH *v.* MOHAN...**I. L. Rep. 2 All. 497, 1879, F. B.**

37. —— *Order refusing to rehear Appeal decided* Ex-parte—*Act X. of* 1877, § 560—*Second Appeal.*] Section 560 of the Civil Procedure Code, Act X. of 1877, is not mandatory, but permissive and discretionary. A person against whom an appeal has been decided *ex-parte*, and who has applied to the Appellate Court, under that section, for a rehearing of the appeal and been refused, is not bound to appeal against the order of refusal, but may present a second appeal from the judgment in appeal. RAMJAS *v.* BAIJ NATH. *Stuart*, C.J. and *Spankie*, J...**I. L. Rep. 2 All. 567, 1879.**

38. —— *Execution of Decree—Application to set aside Sale of Immoveable Property—Act X. of* 1877, §§ 311, 312, 313, *and* 588, m.] Though an auction purchaser may not apply under § 311 of the Civil Procedure Code, Act X. of 1877, to have a sale set aside, he yet may be a party to the proceedings after an application has been made under that section, and then if an order is made against him, he can appeal from such order under § 588 (*m*) of the Act. KANTHI RAM *v.* BANKEY LAL. *Spankie* and *Oldfield*, JJ. **I. L. Rep. 2 All. 396, 1879.**

APPEAL—CRIMINAL—Abatement of.

See **Abatement of Appeal—Criminal.**

IMPX. *v.* DONGAJI...**I. L. Rep. 2 Bom. 564.**

—— Against an Acquittal.

See **Appeal—Criminal. 1. 4. 5. 6. 7.**

—— From an Acquittal.

See **High Court Criminal Procedure, Act X. of 1875, § 147. 2.**

CORPORATION OF CALCUTTA *v* BHEECUNRAM NAPITT...**I. L. Rep. 2 Cal. 290.**

—— From Acquittal—Arrest by Magistrate pending.

See **Appeal—Criminal. 5.**

Digitized by Google

APPEAL—CRIMINAL—*contd.*

—— From Acquittal—Arrest pending—High Court can order.

See **Appeal—Criminal. 6. 7.**

—— From Acquittal—Limitation for.

See **Appeal—Criminal. 5.**

—— Aggregate Sentence — Measures Right of.

See **Appeal—Criminal. 3.**

—— Arrest by Magistrate pending—from Acquittal—Power of High Court.

See **Appeal—Criminal. 5.**

—— Arrest Pending — from Acquittal—High Court can order.

See **Appeal—Criminal. 6. 7.**

—— From Judicial Commissioner to Special Court at Rangoon from Sentence of latter in Case transferred by him from Sessions Judge.

See **Jurisdiction. 17.**

EMPRESS *v.* TSIT OOE...**I. L. Rep. 4 Cal. 667.**

—— By Persons Convicted under § 36, Act X. of 1872.

See **Criminal Procedure Code, Act X. of 1872, § 36.**

EMPRESS *v.* NADUA...**I. L. Rep. 2 All. 53.**

—— Against Sanction to Prosecute or Refusal to grant Sanction.

See **Sanction to Prosecute. 1.**

BARKAT-ULLAH-KHAN *v.* RENNIE. **I. L. Rep. 1 All. 17.**

See **Presidency Magistrates' Act IV. of 1877, § 41.**

JANOKEY NATH ROY...**I. L. Rep. 2 Cal. 466.**

—— Substantive Sentence—Sentence of Imprisonment in Default of Payment of Fine.

See **Presidency Magistrates' Act IV. of 1877, § 167.**

In the matter of JOTHARAM DAVAY. **I. L Rep. 2 Mad. 30.**

—— Trial by Jury of Offence triable with Assessors.

See **Trial by Jury.**

EMPRESS *v.* MOHINI CHUNDER RAI. **I. L. Rep. 3 Cal. 765.**

APPEAL—CRIMINAL—*contd.*

1.—— *Practice—Presentation.*] A petition of appeal in a criminal case may be presented to the Appellate Court by any person authorized by the appellant to present it. *In the matter of* SUBBA AITALA. *Innes*, C.J. (Offg.) and *Busteed*, J.....**I. L. Rep. 1 Mad. 304, 1877.**

2.—— *Against an Acquittal by a Jury—Criminal Procedure Code, Act X. of* 1872, § 263 *—Dissent of Judge.*] The Government has a right to appeal against an acquittal by a jury where the Judge differs from the jury, but does not consider it necessary for the ends of justice to refer the case to the High Court. IMPX. *v.* HARI GANU. *Westropp*, C.J., and *Melvill*, J... **I. L. Rep. 2 Bom. 526, n.**

3.—— *Act X. of* 1872, §§ 314 & 18—*Combined Sentences for several Offences—Appeal.*] The combined sentence passed under § 314 of Act X. of 1872, in a case of simultaneous convictions for several offences, must be considered a single sentence for the purposes of confirmation or appeal. REG. *v.* RAMA BHIYGOWDA. *Melvill* and *West*, JJ...**I. L. Rep. 1 Bom. 223, 1876.**

4.—— *Act X. of* 1872, § 272.—*Appeal—Officer appointed to prefer Appeal—Acquittal.*] On the trial by a jury of a person charged with murder, the jury found the accused not guilty of murder, but convicted him of culpable homicide not amounting to murder. The Sessions Judge, though he disagreed with the verdict, declined to submit the case to the High Court under § 263 of Act X. of 1872. The Local Government then directed the Legal Remembrancer to appeal under § 272 of Act X. of 1872, and in pursuance thereof an appeal was preferred by the Junior Government Pleader :—*Held*, that the appeal was duly made. *Held* also, that a judgment passed by a Sessions Court, following the verdict of a jury accquitting the prisoner, is a judgment of acquittal within the meaning of § 272 of Act X. of 1872, and that there being an acquittal on the charge of murder, the appeal lay. EMPRESS *v.* JUDOONATH GANGOOLY. *Jackson* and *McDonell*, JJ....**I. L. Rep. 2 Cal. 273, 1877.**

5.—— *Act X. of* 1872, § 272.—*Appeal from Acquittal—Limitation.*] An appeal by the Local Government under § 272 of Act X. of 1872, is within time if presented within six months from the date of acquittal. The sixty days' rule does not apply. EMPRESS *v.* JYADULLA...**I. L. Rep. 2 Cal. 436, 1877, F. B.**

Digitized by Google

APPEAL—CRIMINAL—*contd.*

6.—— *Act X. of* 1872, § 272—*Arrest pending Appeal.*] In an appeal under § 272 of Act X. of 1872, the High Court has power to order the accused to be arrested pending the appeal. REG. *v.* GOBIN TEWARI. *Macpherson* and *Morris*, JJ. .....I. L. Rep. 1 Cal. 281, 1876.

7.—— *Act X. of* 1872, § 272.—Where an appeal has been preferred under § 272 of Act X. of 1872, against an acquittal, the High Court may order the accused to be arrested pending the appeal. *Reg. v. Gobind Tewari* (I. L. Rep. 1 Cal. 281) followed. EMPRESS *v.* MANYU...I. L. Rep. 2 All. 340, 1879, F. B.

APPEAL TO FULL COURT FROM DIVISION BENCH WHEN JUDGES DIFFER—Not confined to Points of Difference.

See **Appeal—Civil. 17.**

RAM DIAL *v.* RAM DAS.....I. L. Rep. 1 All. 181.

APPEAL HEARD EX PARTE BEFORE THE PRIVY COUNCIL—Re-hearing of.

See **Practice—Privy Council. 4.**

MAHARAJAH PERTAB NARAIN SINGH *v.* MAHARANEE SUBHAO KOER. L. Rep. 5. I. A. 171.

APPEAL FROM ORDER—Under Act VIII. of 1859, § 254—Defaulting Purchaser.

See **Appeal—Civil. 17.**

RAM DIAL *v.* RAM DAS...I. L. Rep. 1 All. 181.

—— Admitting Review.

See **Review. 9.**

ABDUL RAHIM *v.* RACHA RAI... I. L. Rep. 1 All. 368.

—— Awarding Commission to Administrator-General.

See **Administrator Generals' Act II. of 1874, § 27.**

SOMASUNDARAM CHETTI *v.* ADMINISTRATOR-GENERAL...I. L. Rep. 1 Mad. 148.

—— For Delivery of Stolen Property.

See **Government Currency Note.**

EMPRESS *v.* JOGESSUR MOCHI...I. L. Rep. 3 Cal. 379.

APPEAL FROM ORDER—*contd.*

—— Directing an Award to be filed.

See **Appeal—Civil. 13. 13a.**

HUSSAINI BIBI *v.* MOHSIN KHAN... I. L. Rep. 1 All. 156.

RAMADHIN *v.* MAHESH .....I. L. Rep. 2 All. 471.

See **Arbitration. 4.**

BOONJAD MATHOOR *v.* NATHOO SHAHOO.....I. L. Rep. 3 Cal. 375.

—— In Execution of Decree.

See **Appeal—Civil. 24. 27. 29. 33.**

See **Civil Procedure Code, Act X. of 1877, § 244.**

DALPATBHAI *v.* AMARSING...I. L. Rep. 2 Bom. 553.

—— In Execution of Decrees under Act XX. of 1866 on Specially Registered Bond.

See **Appeal—Civil. 7. 11. 12.**

BHYRUB CHUNDER *v.* GOLAP COOMARY...I. L. Rep. 3 Cal. 517.

RAMANAND *v.* BANK OF BENGAL... I. L. Rep. 1 All. 377.

WILAYAT-UN-NISSA *v.* WAJIB-UN-NISSA .....Ibid. 583.

—— In Execution of Decree Passed before Act X. of 1877 came into operation.

See **Appeal—Civil. 5. 9. 27. 29.**

RUNJIT SINGH *v.* MEHERBAN KOER...I. L. Rep. 3 Cal. 662.

CHINTO JOSHI *v.* KISHNAJI NARRAYEN...I. L. Rep. 3 Bom. 214.

THAKUR PRASAD *v.* AHSAN ALI... I. L. Rep. 1 All. 668.

UDA BEGUM *v.* IMAM-UD-DIN... I. L. Rep. 2 All. 74.

—— Fixing Amount of Court Fees on Plaint.

See **Court Fees. 4. 5. 6.**

CHUNIA *v.* RAMDIAL...I. L. Rep. 1 All. 360.

NARRAYAN NAIK *v.* COLLECTOR OF THANA...I. L. Rep. 2 Bom. 145.

MANOHAR GANESH *v.* BAWA RAMCHARANDAS.....Ibid. 219.

Digitized by Google

APPEAL FROM ORDER—*contd.*

—— Granting Certificate that Case is Fit Case for Appeal to Privy Council—none.

See **Letters Patent (Calcutta), 1865, Cl. 15. 1.**

MOWLA BUKSH *v.* KISHEN PERTAB SAHI...**I. L. Rep. 1 Cal. 102.**

—— Granting Leave to Prosecute under § 41, Act IV. of 1877.

See **Presidency Magistrates' Act IV. of 1877, § 41.**

JANOKEY NATH ROY...**I. L. Rep. 2 Cal. 466.**

—— Interlocutory Order.

See **Appeal to the Privy Council. 3. 5.**

PALAK DHARI RAI *v.* RADHA PRASAD SINGH...**I. L. Rep. 2 All. 65.**

TETLEY *v.* JAI SHANKAR...**I. L. Rep. 1 All. 726.**

—— Placing a Party on the Record who is not Legal Representive of a Deceased Party.

See **Stat. 24 & 25 Vict., C. 104, § 15. 7.**

POGOSE *v.* CATCHICK...**I. L. Rep. 3 Cal. 708.**

In the matter of POGOSE...**I. L. Rep. 3 Cal. 710, n.**

—— Refusing Leave to sue *in forma Pauperis.*

See **Appeal—Civil. 18.**

COLLIS *v.* MANOHAR DAS...**I. L. Rep. 1 All. 745.**

—— Refusing to Postpone Sale in Execution of Decree—Stay of Execution pending.

See **Stay of Execution.**

HARSHANKAR PARSHAD.....**I. L. Rep. 1 All. 178.**

—— Refusing to Re-admit Appeal Dismissed under § 556, Act X. of 1877.

See **Appeal—Civil. 21.**

ELAHE BUKSH *v.* MARACHOW...**I. L. Rep. 4 Cal. 825.**

—— Refusing to Set Aside Judgment *Ex-parte.*

See **Appeal—Civil. 2. 19.**

LAKMIDAS *v.* EBRAHIM...**I. L. Rep. 2 Bom. 644.**

GULAB SINGH *v.* LACHMAN DAS ..**I. L. Rep. 1 All. 748.**

APPEAL FROM ORDER—*contd.*

—— Refusing to Set Aside *Ex-parte* Decree not an Appeal within Act IX. of 1871, Sched. II., Art. 167.

See **Limitation. 87.**

SHEO PRASAD *v.* ANRUDH SINGH...**I. L. Rep. 2 All. 273.**

—— Rejecting Appeal against Refusal to Register.

See **Appeal—Civil. 10.**

SYUD MAHOMET *v.* HADZI ABDULLAH...**I. L. Rep. 3 Cal. 727.**

—— Rejecting Application to be declared an Insolvent under Civil Procedure Code.

See **Civil Procedure Code, Act X. of 1877, § 344.**

MUMTAZ HOSSEIN *v.* BIJ MOHUN THAKOOR...**I. L. Rep. 4 Cal. 888.**

—— Of Remand.

See **Appeal to the Privy Council. 5.**

TETLEY *v.* JAI SHANKAR...**I. L. Rep. 1 All. 726.**

—— Requiring Security from Person to whom Certificate to collect Debts granted.

See **Appeal—Civil. 16.**

RUKMIN...**I. L. Rep. 1 All. 287.**

—— Returning Plaint for Presentation in Proper Court, made after Admission of Suit.

See **Appeal—Civil. 26.**

KALIAN DAS *v.* NAWAL SINGH...**I. L. Rep. 1 All. 620.**

—— Returning Plaint after Framing Issues.

See **Appeal—Civil. 23.**

ABDUL SAMAD *v.* RAJINDRO KISHOR SINGH...**I. L. Rep. 2 All. 357.**

—— Setting aside Sale in Execution of Decree.

See **Appeal—Civil. 22.**

GOPAL SINGH *v.* DULAR KUAR...**I. L. Rep. 2 All. 352.**

APPEAL TO PRIVY COUNCIL—No Appeal from Order granting.

See **Letters Patent (Calcutta), 1865, Cl. 15. 1.**

MOWLA BUKSH *v.* KISHEN PERTAB SAHI...**I. L. Rep. 1 Cal. 102.**

Digitized by Google

APPEAL TO PRIVY COUNCIL—*contd.*

—— Dismissal of—for Default in Deposit of Security and Costs of Transcribing Record.
See infra. **4.**

—— From Interlocutory Order.
See infra. **3. 5.**

—— Limitation for Petition for Leave to—Exclusion of Time required to obtain Copy of Judgment.
See **Limitation. 90.**
JAWAHIR LAL *v.* NARAIN DAS... **I. L. Rep. 1 All. 644.**

—— Re-hearing of—Grounds for.
See **Practice—Privy Council. 4.**
TRILOKINATH...**I. L. Rep. 4 Cal. 184.**

—— Special Leave.
See **Practice—Privy Council. 5. 6. 7. 8. 9.**

—— Substantial Question of Law.
See **Act VI. of 1874, § 5. 1.**
FEDA HOSSEIN...**I. L. Rep. 1 Cal. 431.**

——Substantial Question of Law Arising on the Evidence.
See **Act VI. of 1874, § 5. 2.**
MORAN *v.* MITTU BIBEE.....**I. L. Rep. 2 Cal. 288.**

1.—— *Stamp Act XXVI. of* 1867, § 11—*Valuation of Suit—Value of Property.*] A party who, in observance of the rule of valuation prescribed by the stamp law of the country in which he sues, has paid stamp duty on a sum lower than the appealable amount, is not thereby precluded from obtaining leave from the Courts of that country to appeal to Her Majesty in Council, if he can show that the value of the property in dispute does reach the appealable amount. Act XXVI. of 1867 does not alter the law in this respect. BABOO LEKRAJ ROY *v.* KANHYA SINGH..... .....**L. Rep. 1 I. A. 317, 1874.**

2.—— *Act II. of* 1863, § 1—*Court of Highest Civil Jurisdiction—Act XXXII. of* 1871.] The Commissioner of Seetapore (in Oudh) having admitted an appeal to the Privy Council, from his decree dated the 10th June 1872, affirming the decree of the Settlement Officer of that district, dated the 20th of December 1871, a preliminary objection was taken, when the appeal was called on for hearing, that the Commissioner had no legal authority to admit the appeal, his Court being subordinate to that of the Judicial Commissioner, and therefore not "the Court of highest jurisdiction in the province" :—

Held, that although under Act XXXII. of 1871, § 4 (the Oudh Civil Courts' Act), the decision of the Commissioner affirming that of the Settlement Officer was final, the Court of the Commissioner was not the Court of highest civil jurisdiction in the province within the meaning of Act II. of 1863. Those words have reference to the general jurisdiction of the Courts, and not to the finality of their decisions in particular cases. THAKOOR HARDEO BUX *v.* THAKOOR JAWAHIR SINGH...**L. Rep. 4 I. A. 178, 1877; I. L. Rep. 3 Cal. 522.**
S. C. under **Act I. of 1869. 6.**

3.—— *Interlocutory Order—Execution of Decree—Act X. of* 1877, § 594.] The District Judge of Ghazipur recalled to his own file the proceedings in the execution of a decree which were pending in the Court of the Subordinate Judge of Shahabad, and disallowed an application for the execution of the decree which had been preferred to that Judge. The High Court on appeal from the order of the District Judge annulled his order as void for want of jurisdiction, and remitted the case in order that the application might be disposed of on its merits, directing that the record of the case should be returned to the Subordinate Judge of Shahabad. On an application for leave to appeal to Her Majesty in Council from the order of the High Court;—*Held*, that such order was in the nature of an interlocutory order, and not one from which a certificate for appeal to the Privy Council could or ought to be given. PALAK DAHRI RAI *v.* RADHA PARSAD SINGH. *Pearson* and *Turner*, JJ... **I. L. Rep. 2 All. 65, 1878.**

4.—— *Dismissal of Appeal for Default in Deposit of Security, and Costs of transcribing Record.*] On an application to stay proceedings in an appeal to the Privy Council, which had been presented on the 2nd July 1874, from a decision of the High Court on its Original Side, it appeared that no deposit had been made by the appellant to defray the costs of transcribing, &c., as provided by § 11 of Act VI. of 1874; that no steps had been taken to prosecute the appeal; and that no security had

Digitized by Google

APPEAL TO PRIVY COUNCIL—*contd.*

been deposited for the costs of the respondent since the petition of appeal was presented. The Court granted a rule calling on the appellant to show cause why the proceedings on appeal should not be stayed, and on his not appearing to show cause, ordered that the appeal should be struck off the file. THAKOOR KAPILNATH SINGH *v.* THE GOVERNMENT. *Phear*, J...**I. L. Rep. 1 Cal. 142, 1876.**

5.—— *Interlocutory Order—Act VI. of* 1874 *—Act X. of* 1877*—Letters Patent (Allahabad), Cl.* 31.] *Held*, that the High Court (at Allahabad) has no power under Act X. of 1877, or Cl. 31 of the Letters Patent (Allahabad) to grant leave to appeal to the Privy Council from an order of the Court remanding a suit for re-trial, such an order not being a decree, but an interlocutory order.

Cl. 31 of the Letters Patent (Allahabad) was repealed by implication by Act X. of 1877 and Act VI. of 1874 which preceded it. TETLEY *v.* JAI SHANKAR. *Turner*, C. J. (Offg.), and *Pearson*, J. ..... **I. L. Rep. 1 All. 726, 1878.**

APPEALABLE CASE — RECORD IN— Substance of Evidence.

See **Summary Trial.**

EMPRESS *v.* KARAN SINGH ... **I. L. Rep. 1 All. 680.**

APPEALABLE VALUE — Valuation of Property for purposes of Stamp Law — Value of Property.

See **Appeal to the Privy Council. 1.**

BABOO LEKHRAJ ROY *v.* KANHYA SINGH...**L. Rep. 1 I. A. 317.**

APPELLATE COURT—POWERS OF— *Act XXIII. of* 1861, § 37.] In a suit on a mortgage bond, and an agreement under which the defendants, the mortgagors, rented the lands mortgaged from the plaintiff, the mortgagee, the defendants, having applied for and failed to obtain an adjournment in the Court of first instance, to enable them to put in a reply to the claim, did not appear to defend, and the Court of first instance decreed the plaintiff's claim, except as to the interest sought to be recovered. The plaintiff appealed on the matter of interest, and the defendants did not defend the appeal; but the Judge, holding that, under § 37 of Act XXIII. of 1861, he was at liberty on the appeal preferred by the plaintiffs to open the whole case, and

APPELLATE COURT—POWERS OF— *contd.*

considering that the Court of first instance was not justified in refusing to allow time to the defendants, and that, looking into the deeds there was reason to believe that the plaintiff's claims for possession was not maintainable, and that one of the deeds sued on, was invalid for want of registration, reversed the decree of the first Court and remanded the case :—

Held, that the Judge's order could not be supported under § 37 of Act XXIII. of 1861. He had held that there had been an improper consideration and admission of evidence affecting the merits of the claim, though those matters were never put in issue in the appeal before him, whereas he should have confined himself to deciding the matters put in issue by the parties. The only question before the Judge was that raised by the plaintiff, and he should have confined his decision to that question. DURGA PRASAD *v.* KHAIRATI. *Pearson* and *Oldfield*, JJ. **I. L. Rep. 1 All. 545, 1878.**

See also **Power of Appellate Court.**

APPLICATION FOR ASSESSTMENT OF MESNE PROFITS—Limitation.

See **Civil Procedure Code, Act VIII. of 1859, § 197.**

DILDAR HOSSEIN *v.* MUJEEDUNNISSA.....**I. L. Rep. 4 Cal. 629.**

APPLICATION BY AN ATTORNEY UNDER RULE 149 OF THE COMMON LAW RULES OF THE SUPREME COURT.

See **Attorney and Client. 1.**

ABA ISHMAIL *v.* ABA THARA...**I. L. Rep. 1 Bom. 253.**

APPLICATION FOR DISCHARGE FROM IMPRISONMENT.

See **Civil Procedure Code, Act X. of 1877, § 342.**

RATTANSI KALIANJI...**I. L. Rep. 2 Bom. 148.**

APPLICATION TO ENFORCE A DECREE.

See **Limitation. 89.**

PRABACHARROW *v.* POTTANNAH... **I. L. Rep. 2 Mad. 1.**

Digitized by Google

APPLICATION TO ENFORCE OR KEEP IN FORCE DECREES OR ORDERS.

See **Limitation. 67. 70. 72. 74. 75. 77. 78. 80. 82. 83. 84. 85. 88.**

——Application under Act VIII. of 1859, § 285.

See **Limitation. 77.**

HUSAIN BAKSH *v.* MADGE...**I. L. Rep. 1 All. 525.**

——Application for Stay of Execution is not an.

See **Limitation. 78.**

FAKIR MUHAMMAD *v.* GHULAM HUSAIN...**I. L. Rep. 1 All. 580.**

—— Application for Transfer of Decree to an other Court for Execution is.

See **Execution of Decree. 18.**

COLLINS *v.* MAULA BAKSH...**I. L. Rep. 2 All. 284.**

——" Date of Applying "—Application to stay Execution.

See **Limitation. 78.**

FAKIR MUHAMMAD *v.* GHULAM HUSSAIN...**I. L. Rep. 1 All. 580.**

—— Though Informal, is Sufficient.

See **Limitation. 80.**

BEHARI LAL *v.* SALIK RAM...**I. L. Rep. 1 All. 675.**

APPLICATION FOR EXECUTION OF DECREE.

—— Is not a " Suit."

See **Limitation. 40.**

JIWAN SINGH *v.* SARNAM SINGH...**I. L. Rep. 1 All. 97.**

—— Application to enforce, or keep in force Decrees or Orders.

See the Index heading **Application to enforce, or keep in force, Decrees or Orders.**

—— Exclusion of Date of—in Computation of Period of Limitation for Execution.

See **Limitation. 82.**

DHONESSUR KOOER *v.* ROY GOODER SAHOY...**I. L. Rep. 2 Cal. 336.**

APPLICATION FOR EXECUTION OF DECREE—*contd.*

—— In Favour of Firm in Agent's Name—Application by Agent succeeding Agent named in Decree.

See **Execution of Decree. 13.**

LACHMAN BIBI *v.* PATNI RAM...**I. L. Rep. 1 All. 510.**

—— Joint Decree—Application for Partial Execution of.

See **Limitation. 75.**

RAM ANTAV *v.* AJUDHIA SINGH...**I. L. Rep. 1 All. 231.**

—— Made after Act IX. of 1871 came into operation for Execution of Decree passed before.

See **Limitation. 69. 70. 73. 74. 75. 77. 80. 81. 83. 84. 88. 89.**

—— Made by Agent of Firm succeeding the Agent in whose Name Decree passed.

See **Execution of Decree. 13.**

LACHMAN BIBI *v.* PATNI RAM...**I. L. Rep. 1 All. 510.**

—— Made by Mooktear on behalf of Judgment-Creditors.

See **Execution of Decree. 2.**

ANTO MISREE *v.* BIDHOOMOOKHEE DAHEE...**I. L. Rep. 4 Cal. 605.**

—— Payable by Instalments.

See **Limitation. 71. 71a. 72. 73.**

—— Made by Alleged Purchaser—Refusal—Appeal.

See **Act XXIII. of 1861, § 11. 1.**

SOBHA BIBEE *v.* MIRZA SAKHAMAT ALI...**I. L. Rep. 3 Cal. 371.**

See **Appeal—Civil. 9.**

RANJIT SINGH *v.* MEHERBAN KOER. **I. L. Rep. 3 Cal. 662.**

—— *Act VIII. of 1859—Act X. of 1877, § 230.*] An application, under Act VIII. of 1859, for execution of a decree, was rejected by the District Judge on the ground that the judgment-creditor had withdrawn from the former application. This order was reversed on appeal, and the case was sent back for disposal on its merits. The Judge then held that Act X. of 1877, which had just come into force, applied, and, on the ground that the decree-holder had failed to get execution on his former application, dismissed

Digitized by Google

APPLICATION FOR EXECUTION OF DECREE—*contd.*

the petition. The Judge referred the case to the High Court on the question whether he was, under the circumstances, at liberty to grant the application :—

Held, that he was; and that the application ought to have been dealt with under the law which was in force at the time execution was sought. Section 230 of Act X. of 1877 was inapplicable, as the mode of procedure there laid down can only be followed in cases in which a previous application has been made *under that section* and has been granted, and where the Judgment-creditor is unable to satisfy the Court that he used due diligence in following up such previous application. BYRADDI SUBBAREDDI *v.* DASAPPA RAU. *Morgan*, C.J., and *Forbes*, J... **I. L. Rep. 1 Mad. 403, 1878.**

APPLICATION FOR GRANT OF PROBATE—Right of Creditors of Alleged Heir of Testator to oppose.

See **Probate. 6.**

DESPUTTY SINGH...**I. L. Rep. 2 Cal. 208.**

APPLICATION BY HEIR OF DECREE-HOLDER FOR EXECUTION—Certificate to collect Debts not necessary to authorize.

See **Civil Procedure Code, Act VII. of 1859, § 208.**

KARAM ALI *v.* HALIMA...**I. L. Rep. 1 All. 686.**

APPLICATION FOR LEAVE TO SUE IN FORMA PAUPERIS—Abandonment of—Subsequent Payment of Stamp—Limitation.

See **Limitation. 37.**

CHUNDER MOHUN *v.* BHUBON MOHINI... **I. L. Rep. 2 Cal. 389.**

See **Petition for Leave to Sue in forma Pauperis. 1. 2.**

SKINNER *v.* ORDE...**I. L. Rep. 1 All. 230; L. Rep. 6 I. A. 126; 3 Cal. Rep. 331.**

See **Suit in forma Pauperis.**

NIRMUL CHUNDRA *v.* DOYAL NATH. **I. L. Rep. 2 Cal. 130.**

APPLICATION FOR LEAVE TO SUE IN FORMA PAUPERIS—*contd.*

—— Appeal from Order rejecting.

See **Appeal—Civil. 18.**

COLLIS *v.* MANOHAR DAS...**I. L. Rep. 1 All. 745.**

—— Unsuccessful—not a Demand by Way of Action.

See **Mahomedan Law—Dower. 1.**

RANEE KHAJOOROONISSA *v.* RANEE RYEESOONISSA.....**L. Rep. 2 I. A. 235**

APPLICATION BY MOOKTIAR ON BEHALF OF JUDGMENT-CREDITORS FOR EXECUTION OF DECREE—Act VIII. of 1859, § 207.

See **Execution of Decree. 2.**

ANTO MISREE *v.* BIDHOOMOOKHEE DABEE...**I. L. Rep. 4 Cal. 605.**

APPLICATION BY PETITION WITHOUT SUIT FOR APPOINTMENT OF GUARDIAN.

See **Guardian—Appointment of.**

BITTAN...**I. L. Rep. 2 Cal. 357.**

APPLICATION FOR RESTITUTION BY PERSON DISPOSSESSED—Limitation for.

See **Limitation. 68.**

GUJAR *v.* BARVE.....**I. L. Rep. 2 Bom. 673.**

APPLICATION FOR STAY OF EXECUTION OF DECREE IS NOT AN APPLICATION TO ENFORCE OR KEEP THE DECREE IN FORCE.

See **Limitation. 78.**

FAKIR MUHAMMAD *v.* GHULAM HUSAIN.....**I. L. Rep. 1 All. 580.**

APPLICATION FOR TRANSFER OF DECREE TO ANOTHER COURT FOR EXECUTION—Is an Application to keep Decree in Force.

See **Execution of Decree. 18.**

COLLINS *v.* MAULA BAKSH...**I. L. Rep. 2 All. 284.**

Digitized by Google

APPOINTED DAUGHTER.

See **Hindu Law — Inheritance— Father's Sister's Son.**

THAKOOR JEEBNATH SINGH *v.* THE COURT OF WARDS ... **L. Rep. 2 I. A. 163; 15 Beng. L. R. 190; 23 W. R. 409.**

APPOINTMENT — Power of — Execution of.

See **Will. 8.**

FEHRSEN *v.* SIMPSON ...**I. L. Rep. 4 Cal. 514.**

APPOINTMENT OF GUARDIAN—Application for—by Petition without Suit.

See **Guardian—Appointment of.**

BITTAN ...**I. L. Rep. 2 Cal. 357.**

APPORTIONMENT.

See **Account. 1.**

HIRJI JINA *v.* NARAN MULJI...**I. L. Rep. 1 Bom. 1.**

—— Of Compensation for Land taken up for Public Purposes—Finality of Decree.

See **Land Acquisition Act X. of 1870, § 39.**

NILMONEE *v.* RAMBUNDHOO...**I. L. Rep. 4 Cal. 757.**

APPORTIONMENT OF MORTGAGE DEBT — *Mortgage — Equity of Redemption — Proportionate Share of Mortgage Debt.*] *A.*, the holder of a decree upon a mortgage-bond, attached in execution a one-third share of a certain *mousa*, one of seventeen *mousas* included in the mortgage, and the equity of redemption in which one-third share had been purchased by *B. Held*, that although, as laid down in *Nawab Asimut Ali Khan* v. *Jowahir Singh* (13 Moo. I. A. 404), *B.* would have been at liberty to insist that his one-third share should be burdened with no more than a proportionate amount of the original mortgage debt, and might claim to redeem such share upon payment of that quota, yet as he had not shown what that proportion was nor paid it into Court, that *A.* under the circumstances was entitled to enforce his attachment. HIRDY NARRAIN *v.* SYED ALLA OOLLA. *Jackson* and *Tottenham*, JJ...**I. L. Rep. 4 Cal. 72; 2 Cal. Rep. 531, 1878.**

APPROPRIATION OF PAYMENTS.

See **Account.**

HIRJI JINA *v.* NARAN MULJI...**I. L. Rep. 1 Bom. 1.**

—— *Guarantee.*] In consideration that the plaintiffs would advance a certain sum of money to the C. Company (Limited), to pay the passage money of certain actors, two of the Directors agreed that the plaintiffs should "repay themselves the amount from the first moneys received by them on account of the C. Company, Limited, and each of the two directors agreed to hold himself personally responsible for the payment of half the amount of any deficiency (should there be any) of the amount realized by" the plaintiffs "in the manner above described." At this time the plaintiffs had been acting for some time as the bankers or agents of the Company, advancing money to them from time to time and paying and receiving money for them almost daily, and keeping a regular cash account with them, which was regularly entered in the plaintiff's ledger. In a suit by the plaintiffs against the executrix of one of the directors upon the above guarantee, it appeared that the plaintiffs, instead of applying the first moneys coming to their hands in liquidation of the amount advanced under the guarantee, applied such moneys towards the payment of other debts due to themselves by the Company:— *Held*, that the plaintiffs were bound, as between themselves and the guarantors, to appropriate the first moneys of the Company which they received towards payment of the guaranteed debt, and that if they omitted to do so, it was at their own risk. As the plaintiffs had in fact received sufficient to pay the amount of the passage money, the guarantee was discharged. And it made no difference that the cash account, kept bythe plaintiffs with the Company, was an ordinary debtor and creditor account kept by the plaintiffs as bankers or agents, or as treasurers of the Company, no other account than that being kept by the plaintiffs with the Company, and that being the account which both parties had in view when the guarantee was given. NICHOLLS *v.* WILSON. *Garth*, C.J., and *Markby*, J., affirming on appeal *White*, J. ...**I. L. Rep. 4 Cal. 563; 3 Cal. Rep. 361, 1878.**

Digitized by Google

ARBITRATION—Agreement to Refer to—Revocation—Specific Performance.

See **Contract. 8.**

KOEGLER *v.* THE CORINGA OIL CO. **I. L. Rep. 1 Cal. 42, 466.**

See **Suit for Land. 3.**

KELLIE *v.* FRASER...**I. L. Rep. 2 Cal. 445.**

—— Award, Judgment in Accordance with—Appeal.

See **Arbitration. 4. 6.**

—— Award, Order to File—Appeal.

See **Appeal—Civil. 13. 13a.**

—— Award, Refusal to Confirm.

See **Appeal—Civil. 34.**

—— Award, Remission of.

See **Arbitration. 3.**

—— Award, Setting Aside — Misconduct of Arbitration.

See **Arbitration. 7.**

—— Award, Validity and Finality of.

See **Arbitration. 7.**

1.—— *Act XVIII. of* 1873 (*N. W. P. Rent Act*)—*Act XIX. of* 1873 (*N. W. P. Land Revenue Act.*)] Under the general law, parties to suits may, if they are so minded, before issue joined, refer the matters in dispute between them to arbitration and after issue joined, with the leave of the Court.

Act XVIII. of 1873 does not prohibit the parties to the suits mentioned therein from referring the matters in dispute between them in such suits to arbitration. Where, therefore, the parties to a suit under that Act agreed to refer the matters in dispute between them to arbitration, after issues had been framed and the evidence recorded, and applied to the Court to sanction such reference:—*Held* (*Stuart*, C.J., dissenting), that the Court was competent to grant such sanction, and on receiving the award, to act on it. GOSHAIN GIRDHARIJI *v.* DURGA DEVI.....**I. L. Rep. 2 All. 119, 1879, F.B.**

2.—— *Insolvency—Composition—Contract Act* (*IX. of* 1872, § 65.)] *K.* on the one part, and his creditors, including *C.* on the other part, agreed to refer the difference between them to arbitration. The award recited that *K.*'s liabilities amounted to Rs. 21,502, while his assets consisted only of stores, &c., of the value of Rs. 16,539, and "awarded that in payment of the said sum of Rs. 21,502, the stores, &c., now in *K.*'s possession, be made over to the creditors; and the creditors have released *K.* from the payment of the said balance of Rs. 4,632; now there is no claim for these debts by the creditors against *K.*," and directed that *K.* should dispose of the stores for the benefit of the creditors, and that if he misappropriated any of the property, he should be personally liable for the loss sustained by the creditors. This award was signed by *C.*, amongst other creditors, but it was not signed by all the creditors. *C.* received a dividend under the award. In a suit by *C.* against *K.*, to recover a debt which had been compounded under the award, alleging that the award was not binding on him, on the ground that all the creditors had not signed it; that several of the creditors who had not signed it had sued and recovered their debts from the property assigned under the award, and that *K.* had fraudulently disposed of some of such property; and that, if the plaintiff did not sue, there would be no assets left to satisfy his debts:—

Held, that *C.* and all persons who signed the award, and who were parties to and signed the agreement to refer to arbitration, were bound by their acts. The agreement entered into for the satisfaction of the claims of creditors was a new contract substituted for former contracts between creditors and *K.* If creditors who had not signed the award obtained decrees, the creditors who had signed it could only protect themselves under the award. They could not rescind the award and fall back on their old debts, in satisfaction of which the defendant had assigned all his property for the benefit of his creditors, and that the suit was not maintainable. Section 65 of the Contract Act IX. of 1872 did not apply. KHETA MAL *v.* CHUNI LAL...**I. L. Rep. 2 All. 173.**

3.—— *Act VIII. of* 1859, §§ 323, 324—*Remission of Award—No Illegality apparent on face of Award—Refusal of Arbitrator to reconsider—Decision by Court.*] The plaintiff claimed to recover Rs. 520, being the amount of presents received at his marriage, which he alleged had been appropriated by the defendants. The defendants alleged that a sum of Rs. 1,132 had been expended on the plaintiff's marriage out of the funds of a firm in which the plaintiff, his father, and they were partners; that they had not received the sum claimed, but that the plain-

Digitized by Google

ARBITRATION—*contd.*

tiff's father had received and expended a sum of Rs. 549 which had been presented to the plaintiff on his marriage, and that the plaintiff's father had entered the sum claimed in the partnership books to the credit of the firm, but that no sum on account of marriage presents had come into their hands. The parties agreed to refer the matter to arbitration, and to abide by the decision of the arbitrator. The arbitrator made an award, in which he stated that he had investigated the case, taken the depositions of witnesses and the statements of the parties, and had taken into consideration the custom of the brotherhood to which the parties belonged, and perused the passages in the Hindu law referred to by the parties and their pleaders. The plaintiff subsequently obtained the opinion of certain pandits to the effect that under Hindu law, gifts at marriage are regarded as separate acquisitions, and applied to the Munsiff to remit the award, with these opinions, to the arbitrator. The Munsiff did so, requesting the arbitrator to consider the opinions and return his own opinion in writing within a week. The arbitrator having refused to act any further in the matter, the Munsiff proceeded to determine the suit: and gave the plaintiff a decree:—

Held (*Pearson*, J., dissenting), that there being no illegality apparent on the face of the award, the Munsiff was not justified in remitting the award, or in setting it aside and proceeding to determine the suit himself, but that he should have passed judgment in accordance with the award.

In the face of the statement in the award that the arbitrator had "perused the passages in the Hindu law referred to by the parties and their pleaders," the Munsiff had no right to assume that the arbitrator had not correctly applied the Hindu law; and if the Munsiff differed from him, and believed that he had not correctly applied the principles of the Hindu law, the award was not thereby rendered invalid, and ought not to have been remited for reconsideration. By accepting him as their arbitrator, the parties accepted his judgment and opinion, and his understanding of the Hindu law applicable to the case, and were bound by his judgment and opinion and his law, no matter how mistaken he may have been in these respects. NANAK CHAND *v.* RAM NARRAYAN...**I. L. Rep. 2 All. 181, 1879, F. B.**

4. —— *Matters referred to—Arbitrators doubting Correctness of their Decision—Award, Validity and Finality of—Appeal, Right of—Act VIII. of* 1859, §§ 325-327.] Matters in dispute were referred to the arbitration of five persons. Four of the arbitrators made an award on the 27th of August 1875. On the 3rd of September 1875, the same arbitrators granted an application by one of the parties for a re-hearing, but before the re-hearing, one of the four died, and finally an order was made by two of the survivors striking off the application. On the 21st of February 1875, within the six months allowed by law, an application by certain of the parties interested, was made to file the award under § 327 of Act VIII. of 1859. This application was opposed, but the Court ordered the award to be filed, and gave a decree for the plaintiff:—

Held, that the award was not a valid and final award, and that the decree passed thereon was not final, and that an appeal would lie.

Where there has been an award, and the decree passed by the Court below is in accordance with that award, that judgment is final; but where it can be shown that there was not in fact any award on which a judgment could be based, there is no final decree, and an appeal will lie. In the present case, the arbitrators, after making the award and after an interval of only a very few days, had expressed a doubt as to the correctness of their award by intimating their readiness to reconsider their decision. It was not the intention of the Act that the Court should bind parties by the result of a private arbitration when the arbitrators themselves plainly showed that they doubted the correctness of their decision. BOONJAD MATHOOR *v.* NATHOO SHAHOO. *Jackson* and *Cunningham*, JJ...**I. L. Rep. 3 Cal. 375; 1 Cal. Rep. 455, 1877.**

5. —— *Act VIII. of* 1859, § 327—*Denial of Arbitration Proceedings.*] Section 327 of Act VIII. of 1859 intended to provide for those cases only in which a reference to arbitration is admitted, and an award has been made. Where one of the parties denies that he had referred any dispute to arbitration, or that an award has been made between him and the other party, that is sufficient cause why the award should not be filed. The applicant for its admission should be left to bring a regular suit for the enforcement of the award. *Per Spankie*, J. HUSSAIN BIBI *v.* MOHSIN KHAN...**I. L. Rep. 1 All. 156, 1876.**

S. C. under **Appeal—Civil. 13.**

Digitized by Google

ARBITRATION—*contd.*

6.——*Act VIII. of* 1859, § 327.—*Arbitration —Award—Appeal.*] No appeal lies from a decree passed by a Civil Court, in accordance with an award of arbitrators made without the intervention of a Court of Justice, under Act VIII. of 1859, § 327. *Lakshman Shivaji* v. *Rama Esu Nal* (8 Bom. H. C. Rep. A. C. J. 17) dissented from. VISHNU BHAU JOSHI *v.* RAVJI BHAU JOSHI. *West* and *Pinhey*, JJ...**I. L. Rep. 3 Bom. 18, 1878.**

7.——*Act VIII. of* 1859, § 327. — *Setting aside Award—Misconduct of Arbitrators.*] In an application under § 327 of Act VIII. of 1859, to have an award filed in Court, so as to be enforced as a decree, it was objected, amongst other things, by the defendant, that the award which determined the succession to a talookdary registered under Act I. of 1869, having been based on a certain will produced, which in terms referred to another will of the same testator not produced, there was a miscarriage on the part of the arbitrators in making their award; the whole of the will, in the absence of the last-mentioned document, not having been before them. It appeared, that the defendant in the proceedings before the arbitrators, notwithstanding the knowledge that this document was withheld, submitted, nevertheless, to take his chances of the arbitration; suggesting in fact favourable presumptions to himself in construing the will produced, or that the whole will not having been produced it should be declared not to be operative, and that consequently the dispute should be determined according to the British law of succession as laid down by Act I. of 1869, or according to custom, or according to the Mahomedan law of succession.

Held, that the defendant could not now set aside the award on the objection taken.

Upon the true construction of Act VIII. of 1859, the earlier sections are not incorporated into the 327th section as they are expressly incorporated into the 326th; and the words "sufficient cause" must be taken to comprehend any substantial objection which appears upon the face of the award or is founded on the misconduct of the arbitrators, or on any other ground which would be considered fatal to an award on an application to the Courts in England. CHOWDHRI MURTAZA HOOSEIN *v.* MUSST. BIBI BECHUNNISSA...**L. Rep. 3 I. A. 209, 1876.**

ARBITRATORS— Miscarriage of—Setting aside Award.

See **Arbitration. 7.**

CHOWDHRI MURTAZA HOSSEIN *v.* MUSST. BIBI BECHUNNISSA. **L. Rep. 3 I. A. 209.**

—— Power of—to administer Oath other than in prescribed Form.

See **Oaths' Act X. of 1873, §§ 8, 10, 13.**

WALI-UL-LA *v.* GHULAM ALI...**I. L. Rep. 1 All. 535.**

—— Revocation of Authority of.

See **Contract. 8.**

KOEGLER *v.* CORINGA OIL CO. ...**I. L. Rep. 1 Cal. 42, 466.**

See **Suit for Land. 3.**

KELLIE *v.* FRASER...**I. L. Rep. 2 Cal. 445.**

ARMS—POSSESSION OF — WITHOUT LICENSE.

See **Act XXXI. of 1860, § 32, Cl. 1.**

REG. *v.* BHISTA...**I. L. Rep. 1 Bom. 308.**

ARRANGEMENT FOR SEPARATE PAYMENT OF RENT.

See **Co-Sharers of Land. 1.**

GUNI MAHOMED *v.* MORAN...**I. L. Rep. 4 Cal. 96.**

ARREARS OF ESTATE UNDER ATTACHMENT.

See **Act XI. of 1859, § 5.**

BANWAREE LALL *v.* MOHABEER PROSHAD... **L. Rep. 1. I. A. 98.**

ARREARS OF MAINTENANCE—Charged on the Estate in hands of Hindu Widow—Personal Decree against Widow —Right of Execution Purchaser and Reversionary Heir.

See **Personal Decree against a Hindu Widow.**

BAIJUN DOOBEY *v.* BRIJ BHOOKUN. **L. Rep. 2 I. A. 275; I. L. Rep. 1 Cal. 133.**

—— Jurisdiction of Mofussil Small Cause Courts to entertain Suits for.

See **Small Cause Court—Mofussil. 1. 2.**

Digitized by Google

ARREARS OF MAINTENANCE—*contd.*

APAJI *v.* GANGBAI...**I. L. Rep. 2 Bom. 632.**

SIDLINGAPA *v.* SIDAVA...**I. L. Rep. 2 Bom. 624.**

See **Hindu Law—Maintenance of Widow. 14.**

SAVITRIBAI *v.* LUXMIBAI...**I. L. Rep. 2 Bom. 573.**

—— Limitation—Demand and Refusal.

See **Hindu Law—Maintenance of Widow. 2. 4. 6.**

RANGO *v.* YAMUNABAI...**I. L. Rep. 3 Bom. 44.**

JIVI *v.* RAMJI...**I. L. Rep. 3 Bom. 207.**

KRISHNA *v.* OKHILMONI...**I. L. Rep. 3 Cal. 331.**

ARREARS OF RENT—*Bhaoli* Rent.

See **Bengal Act VIII. of 1869, §§ 21 & 52.**

KISHEN GOPAUL MAWAR *v.* BARNES. **I. L. Rep. 2 Cal. 374.**

—— *Bhaoli*—Suit for Money Equivalent.

See **Act XVIII. of 1873, § 93. 1.**

TAJUDDIN *v.* RAM PARSHAD ..**I. L. Rep. 1 All. 217.**

—— Enhanced Rent—Interest on.

See **Interest. 8.**

KHAJAH ASHANOOLLAH *v.* KHAJA AFTABOODEEN...**I. L. Rep. 4 Cal. 594.**

—— Grain Rent—Suit for Money Equivalent of Arrears.

See **Act XVIII. of 1873, § 93. 1.**

TAJUDDIN *v.* RAM PARSHAD...**I. L. Rep. 1 All. 217.**

—— Limitation for Execution of Decree for.

See **Bengal Act VIII. of 1869, § 58.**

GOLOKEMONEY *v.* MOHESH CHUNDER...**I. L. Rep. 3 Cal. 547.**

—— Limitation to Suit for.

See **Bengal Act VIII. of 1869, § 31.**

RAM SUNKER *v.* BIR CHUNDER... **I L. Rep. 4 Cal. 714.**

See **Limitation. 4. 9. 10. 13.**

WATSON & Co. *v.* DHONENDRA... **I. L. Rep. 3 Cal. 6.**

ARREARS OF RENT—*contd.*

BROJENDRO *v.* RAKHAL.....**I. L. Rep. 3 Cal. 791.**

HURRO PRASHAD *v.* GOPAUL DAS... **Ibid. 817.**

PURRAN CHUNDER *v.* MUTTY LAL... **I. L. Rep. 4 Cal. 50.**

—— Publication and Service of Notice of Sale for—defective—"Sufficient Plea" for setting aside Sale.

See **Bengal Reg. VIII. of 1819, § 8.**

GOWREE LALL *v.* JOODHISTEER... **I. L. Rep. 1 Cal. 359.**

—— Sale for.

See **Putni Talook.**

BRINDABAN SIRCAR CHOWDHRY *v.* BRINDABAN DEY CHOWDHRY.. **L. Rep. 1 I. A. 178.**

—— Sale of *Putni* Tenure for—Suit to set aside Sale—Date of Publication of Notice.

See **Bengal Reg. VIII. of 1819, § 8, Cl. 2, 3.**

MATUNGEE CHURN *v.* MOORRARY MOHUN.....**I. L. Rep. 1 Cal. 175.**

—— Sale of Under-Tenure in Execution of Decree for—Process against other Property of Debtor.

See **Bengal Act VIII. of 1869, § 61.**

HURRISH CHUNDER *v.* COLLECTOR OF JESSORE..**I. L. Rep. 3 Cal. 712.**

—— Suit for—Payment into Court—Limitation.

See **Bengal Act VIII. of 1869, § 31.**

RAM SUNKER *v.* BIR CHUNDER... **I. L. Rep. 4 Cal. 714.**

—— "*Tirvai*" Rent.

See **Insolvency. 2.**

CHIMA S. MUDALI *v.* KANDASWAMI REDDI..**I. L. Rep. 1 Mad. 59.**

—— Zemindari Rent—Right of Mortgagee of Putni Talook to prevent Sale of Mortgaged Property.

See **Co-Sharers of Putni Talook.**

MOHESH CHUNDER *v.* RAM PROSUNNO ... **I. L. Rep. 4 Cal. 539.**

Digitized by Google

ARREARS OF RENT AT ENHANCED RATE—Interest on.

See **Interest. 8.**

KHAJAH ASHANOOLLA *v.* KAJEE AFTABOODDEEN...**I. L. Rep. 4 Cal. 594.**

ARREARS OF REVENUE—Payment of—by Lambardar—Suit by Co-Sharer for Profits—Set-off.

See **Set-off. 1.**

UDAI SINGH *v.* JAGAN SINGH ...**I. L. Rep. 1 All. 135.**

—— Right of Purchaser at Sale for.

See **Mortgage. 3.**

RAMCHANDRA *v.* BHIMRAV...**I. L. Rep. 1 Bom. 577.**

—— Right of Purchaser at Sale for—to enhance Rent.

See **Enhancement of Rent. 1.**

PURMANUND *v.* ROOKINEE...**I. L. Rep. 4 Cal. 793.**

—— Sale for—of Estate under Attachment—Notice.

See **Act XI. of 1859, § 5.**

BUNWAREE LALL *v.* MOHABEER. **L. Rep. 1 I. A. 89.**

—— Sale for—Purchase by Unrecorded Co-Partner—Encumbrances.

See **Act XI. of 1859, § 53.**

ABDOOL BARI *v.* RAMDASS COONDOO...**I. L. Rep. 4 Cal. 607.**

—— Sale for—Purchase by Manager of Joint Hindu Family in his own Name.

See **Act I. of 1845, § 21.**

TOONDUN *v.* POKHNARAIN.....**L. Rep. 1 I. A. 342.**

—— Setting aside Sale for — after Judgment Debtor's Interest in Surplus Proceeds has been sold in Execution.

See **Sale in Execution of Decree. 17.**

RAM TUHUL *v.* BISSESWAR.....**L. Rep. 2 I. A. 131; 15 Beng. L. R. 208; 23 W. R. 305.**

—— Suit by Purchaser at Sale for—to avoid Under-Tenures.

See **Sale for Arrears of Revenue. 1.**

BHAGO BIBEE *v.* RAM KANT ROY. **I. L. Rep. 3 Cal. 293.**

ARREARS OF REVENUE—*contd.*

—— Suit to set aside Sale for—obtained by Fraud of Co-Sharer.

See **Sale for Arrears of Revenue. 2.**

BHOOKUN CHUNDER *v.* RAM SOONDER...**I. L. Rep. 3 Cal. 300.**

—— Suit for Damages caused by Sale for.

See **Damages. 1.**

LALLAH D. SINGH *v.* LALLAH B. DAYAL .....**I. L. Rep. 1 Cal. 406.**

ARREARS OF "TIRVAI" (RENT)—Sale for—Right of Official Assignee.

See **Insolvency. 2.**

CHIMA S. MUDALI *v.* KANDASWAMI REDDI...**I. L. Rep. 1 Mad. 59.**

ARREARS OF ZEMINDARI RENT—Right of Mortgagee of *Putni* Taluk to prevent Sale of Mortgaged Property for.

See **Co-Sharers of Putni Taluk.**

MOHESH CHUNDER *v.* RAM PROSONO...**I. L. Rep. 4 Cal. 539.**

ARREST—Damages for Malicious—Want of Reasonable and Probable Cause—Act VIII. of 1859, § 201.

See **Damages. 4.**

RAJ CHUNDER *v.* SHAMA SOONDARI...**I. L. Rep. 4 Cal. 583.**

ARREST PENDING APPEAL—High Court can order—from Acquittal.

See **Appeal—Criminal. 6, 7.**

REG. *v.* GOBIND TEWARI .....**I. L. Rep. 1 Cal. 281.**

EMPRESS *v.* MANGU...**I. L. Rep. 2 All. 340.**

—— Arrest by Magistrate — Power of High Court.

See **Criminal Procedure Code, Act X. of 1872, § 297. 2.**

REG. *v.* GHOLAM ISMAIL.....**I. L. Rep. 1 All. 1.**

ARREST—PRIVILEGE FROM.

See **Privilege from Arrest.**

OMRITOLALL DEY...**I. L. Rep. 1 Cal. 78.**

ARTICLES OF WAR—Indian.

See **Act V. of 1869.**

Digitized by Google

ARTIFICIAL WATERCOURSE—Right to Flow of Water through.

See **Easement. 4.**

MORGAN *v.* KIRBY...**I. L. Rep. 2 Mad. 46.**

—— *Right to the Flow of Water—Presumption—Right to scour Watercourse.*] The right to the water of a river flowing in a natural channel through a man's land and the right to water flowing to it through an artificial watercourse constructed on his neighbour's land, do not rest on the same principle. In the former case each successive reparian proprietor is, *primâ facie*, entitled to the unimpeded flow of the water in its natural course, and to its reasonable enjoyment as it passes through his land, as a natural incident to his ownership of it. In the latter, any right to the flow of the water must rest on some grant or arrangement, either proved or presumed, from or with the owners of the land from which the water is artificially brought, or on some other legal origin. The right to artificial watercourses, as against the party creating them, must depend on the character of the watercourse, whether it be of a permanent or temporary nature, and upon the circumstances under which it was created.

Wood v. *Wand* (3 Ex. 748; 18 L. J. [Ex.] 305) approved. *Primâ facie*, and in the absence of evidence to the contrary, a right to scour such watercourse is presumed by law to be incident to the right to the flow of the water.

Held in this case, that the plaintiff's legal right to the enjoyment of water overflowing from an artificial reservoir through an artificial watercourse on his neighbour's (the defendant's) land should be presumed from the circumstances under which the same were presumably created and actually enjoyed; subject to the defendant's right to the use of the water for the purpose of irrigating his land, by proper and requisite channels and other proper means. RAMESHUR PERSHAD NARAIN SINGH *v.* KOONJ BEHARI PATTUCK...**L. Rep. 6 I. A. 33, 1878; L. Rep. 4 App. Ca. 121; I. L. Rep. 4 Cal. 633.**

ARTIZAN—Washerman is not an.

See **Madras Act III. of 1871. 1.**

POONEN.....**I. L. Rep. 1 Mad. 174.**

ASCETIC—Succession to the Property of an.

See **Hindu Law — Inheritance—Ascetic.**

KHUGGENDER *v.* SHARUPOIR...**I. L. Rep. 4 Cal. 543.**

ASSENT OF SAPINDAS—Adoption by Widow without Written Authority from Husband, after Succeeding as Heir to her Son—Motives.

See **Hindu Law—Adoption. 12.**

RAJAH VELLANKI *v.* VENKATA RAMA...**L. Rep. 4 I. A. 1; I. L. Rep. 1 Mad. 174.**

ASSESSMENT—*Kumri*—Payment of.

See **Land Tenures in Kanara.**

—— Mortgagee in Possession, Liability of—to pay.

See **Kabulayatdar Khot.**

KRISHNAJI *v.* RAMCHANDRA.....**I. L. Rep. 1 Bom. 70.**

See **Ghatwali Tenure.**

LEELANUND SINGH *v.* THAKOOR MUNRUNJUN.....**I. L. Rep. 3 Cal. 251.**

—— Right to levy—on Rent-Free Lands.

See **Resumption. 2.**

KEVAL *v.* TALUKDAREE SETTLEMENT OFFICER...**I. L. Rep. 1 Bom. 586.**

—— Variation of—does not affect Proprietary Right.

See **Bombay Act I. of 1865, § 35.**

COLLECTOR OF THANA *v.* DADABHAI.....**I. L. Rep. 1 Bom. 353.**

ASSESSMENT BY MUNICIPAL COMMISSIONERS—Appeal against.

See **Beng. Act III. of 1864, § 33.**

MANESSUR DASS *v.* COLLECTOR, &c., OF CHAPRA...**1. L. Rep. 1 Cal. 409.**

ASSESSORS—*Acquittal of Accused without recording the Opinion of—Revision—Act X. of 1872, § 297.*] *Held*, where, without asking the opinion of the Assessors, a Court of Session acquitted an accused person, after his defence had been heard, that such omission, though a serious irregularity, yet, as it did not affect the conduct of the prosecution, or prejudice the accused in

Digitized by Google

ASSESSORS—*contd.*

his defence, was not, with reference to the provisions of §§ 283 and 300 of Act X. of 1872, a ground for revisional interference. *In the matter of the Petition of* NARAIN DAS. *Pearson*, J...**I. L. Rep. 1 All. 610, 1878.**

ASSIGNEE OF CHOSE IN ACTION—Right of.

See **Assignment of Chose in Action.**

KANHAIYA LAL *v.* DOMINGO...**I. L. Rep. 1 All. 732.**

ASSIGNEE OF CO-SHARER IN UNDIVIDED ESTATE—Right of.

See **Mortgage. 9.**

BYJNATH *v.* RAMOODEEN...**L. Rep. 1 I. A. 106; 21 W. Rep. 233.**

See **Partition by the Revenue Authorities.**

SHARAT CHUNDER *v.* HURGOBINDO. **I. L. Rep. 4 Cal. 510.**

ASSIGNEE OF DEBT—*Devisee cannot sue without taking out Probate, or obtaining Certificate under Act XXVII. of* 1860.] The representative of an assignee by devise of a debt, who has neither taken out probate of the will of the testator, nor obtained a certificate under Act XXVII. of 1860, to realize the debts due to his estate, cannot sue to recover the debt. SHODONE MOHALDAR *v.* HALALKHORE MOHALDAR. *Morris* and *Prinsep*, JJ...**I. L. Rep. 4 Cal. 645; 3 Cal. Rep. 462, 1878.**

ASSIGNMENT—Power to receive Money—Stamp.

See **Stamp. 2.**

BHAGVANDAS *v.* ABDUL HUSEIN... **I. L. Rep. 3 Bom. 49.**

ASSIGNMENT BY AUCTION PURCHASER AT EXECUTION SALE.

See **Hindu Law—Sale of Land. 1.**

And *see* **Sale in Execution of Decree. 1.**

GOVIND *v.* GOVIND...**I. L. Rep. 1 Bom. 500.**

ASSIGNMENT OF CHOSE IN ACTION — *Promissory Note—Suit by Assignee.*] A promissory note not made payable to order or to bearer or to any other person than the payee, and therefore not a negociable instrument, was assigned to a third person, who sued in his own name on the note:—

ASSIGNMENT OF CHOSE IN ACTION—*contd.*

Held, that by the law of India a chose in action is assignable, and the assignee is entitled to sue in his own name; but whatever defences might be set up against the assignor may also be set up against the assignee, or at least such defences as might have been set up, up to the time when notice of the assignment was given to the defendant. KANHAIYA LAL *v.* DOMINGO. *Turner*, C.J. (Offg.), and *Pearson*, J. **I. L. Rep. 1 All. 732, 1878.**

ASSIGNMENT BY DEBTOR OF PROPERTY IN TRUST FOR CREDITOR.

See **Arbitration. 2.**

KHETU MAL *v.* CHUNI LAL ..**I. L. Rep. 2 All. 173.**

See **Principal and Surety. 4.**

POGOSE *v.* BANK OF BENGAL.....**I. L. Rep. 3 Cal. 174.**

ASSIGNMENT OF DECREE—Cross-Decrees—Act X. of 1877, § 246.

See **Execution of Decree. 3.**

MURLI DHAR *v.* PARSOTUM DASS... **I. L. Rep. 2 All. 91.**

ASSIGNMENT OF DECREE FOR SALE OF MORTGAGED PROPERTY.

See **Registration. 15.**

GOPAL *v.* TRIMBAK.....**I. L. Rep. 1 Bom. 267.**

ASSIGNMENT OF LEGACY BY LEGATEE TO EXECUTOR.

See **Will. 3.**

VAUGHAN *v.* HESELTINE.....**I. L. Rep. 1 All. 763.**

HURST *v.* MUSSOORIE BANK... **Ibid. 762, 766.**

ASSIGNMENT OF MORTGAGE—*Registration Act VIII. of* 1871, § 17 — *Extrinsic Evidence—Evidence Act. I. of* 1872, § 91 — *Title to sue — Amendment of Plaint — Limitation—Act IX. of* 1871, § 22, *and Sched. II., Arts.* 133, 144, 145 — *Power of Attorney — Foreclosure* —Damdupat.] An equitable mortgage was created on the 15th of August 1862, by deposit of title-deeds. In March 1873 the mortgagee, *P. D.*, executed an assignment of all his property, and of all debts due to him, and all securities therefor, to the plaintiff. The assignment also contained a power of attorney from the mortgagee to the plaintiff, "in the name of the said *P. D.*,

Digitized by Google

ASSIGNMENT OF MORTGAGE—*contd.*

his executors, &c., but for the sole use of the said Adarji Dadabhai (the plaintiff) to ask, demand, sue for, recover and receive of and from all and every the person or persons liable in that behalf all and every (*inter alia*) the sum and sums of money and debts hereby assigned or intended so to be, or any of them or any part of them, to hold the same unto and to the use and behalf of the said Adarji Dadabhai, his executors, &c." Some days after the execution of the assignment, the title-deeds which had been deposited with the mortgagee in 1862, were handed to the plaintiff, in accordance with the terms of an agreement to that effect contained in the assignment. The deed of assignment was not registered. On the 13th of August 1874, the plaintiff, as the assignee of the equitable mortgage, sued for foreclosure. The Court of first instance (*Sargent*, J.,) held that the deed, as an assignment, required registration, and that being unregistered, it could not be received in evidence; that § 91 of the Evidence Act I. of 1872, precluded any other evidence of the assignment being given than the deed of assignment itself, and this being unregistered and inadmissible, the plaintiff failed to prove his title to sue as assignee of the mortgagor. The Court, however, allowed an amendment of the plaint saying (p. 320), "It was said that to amend the frame of the suit now by making the plaintiff sue as attorney for Pestonji Dinsha, would be to introduce a new plaintiff, as to whom the period of limitation must be reckoned back from the date of the amendment, and that the suit would, consequently, be barred under the provisions of the Limitation Act (IX. of 1871). Now, when a party is added to the record, no doubt the suit, so far as he is concerned, is deemed to have been instituted at the time when he is so added. But though if this plaint were amended by altering the description of the plaintiff, and making him sue as the attorney of Pestonjee Dinsha, there might nominally be a new suit, yet virtually it would be the same. It would still be, in fact, the suit of the plaintiff. I should be of opinion that no new plaintiff had been introduced, within the meaning of the Limitation Act." His Lordship then permitted the deed of assignment to be given in evidence to show the power thereby conferred on the plaintiff to sue for and recover all debts due to *P. D.*, and therefore to maintain the present suit in respect of the equitable mortgage.

ASSIGNMENT OF MORTGAGE—*contd.*

Held, on appeal, that as the power of attorney purported to enable the plaintiff to recover the debts mentioned in the deed on his own account only, and not on account of *P. D.*, if on the one hand the suit were regarded as that of *P. D.*, the power did not enable the plaintiff to maintain the suit for *P. D.*, and if on the other hand the suit be regarded as that of the plaintiff, the Court, by treating the power in the deed as enabling him to recover on his own account, virtually gave to that power the effect of an assignment; and for that purpose such an assignment, whether legal or equitable, must be registered: §§ 17 and 47 of Act VIII. of 1871. The Court, however, being of opinion that the omission to register was due to a misapprehension as to the requirements of the law, rather than to any intention to evade the Registration Acts, under the circumstances of the case, adjourned the case for four weeks, to enable the plaintiff to complete his title by obtaining and registering and putting in evidence a fresh assignment from *P. D.*

Held also, that the period of limitation for a suit for foreclosure by the Limitation Act VIII. of 1871, was either twelve years under Art. 132, or sixty years under Art. 149 of Schedule II. of that Act.

Held also, that the rule of *dam-dupat* applied, and was not inconsistent with either Art. 118 or Art. 132 of Schedule II. of that Act. Those articles relate to a time within which a suit must be brought, whereas the rule of *dam-dupat* prescribes that an amount of interest greater than the principal cannot be recovered at once; and this rule has not been abrogated by Act XXVIII. of 1855 or the Limitation Acts, and was applicable in a case like the present, of a mortgage where no account of rents and profits has to be taken. GANPAT PANDURANG *v.* ADARJI DADABHAI. *Westropp*, C. J. and *Green*, J...**I. L. Rep. 3 Bom. 313, 1877.**

ASSIGNMENT OF MORTGAGE FOR MORE THAN Rs. 100, FOR CONSIDERATION LESS THAN Rs. 100.

See **Registration. 7.**

SATRA *v.* VISRAM...**I. L. Rep. 2 Bom. 97.**

ASSIGNMENT BY MORTGAGEE — Rights of Assignee.

See **Mortgage. 11.**

SAHAI PANDEY *v.* SHAM NARAIN... **I. L. Rep. 2 All. 142.**

Digitized by Google

ASSIGNMENT OF PROPERTY PURCHASED AT EXECUTION SALE—POSSESSION.

See **Hindu Law—Sale of Land. 1.**

GOVIND *v.* GOVIND...**I. L. Rep. 1 Bom. 500.**

ASSIGNMENT AND RETRANSFER BY ENDORSEMENT OF POLICY OF ASSURANCE—Stamp on.

See **Stamp. 1.**

MORRISON'S POLICY...**I. L. Rep. 3 Cal. 347.**

ASSIGNMENT OF RIGHT TO SUE.

See **Champerty. 3.**

GOCULDAS *v.* LAKHMIDAS...**I. L. Rep. 3 Bom. 402.**

ASSIGNMENT OF TRUSTEESHIP.

See **Alienation of Right of Management of a Pagoda.**

RAJAH VURMAH *v.* RAVI VURMAH. **L. Rep. 4 I. A. 76; I. L. Rep. 1 Mad. 235.**

ASSOCIATION FOR THE ACQUISITION OF GAIN.

See **Company. 1.**

BHIKAJI *v.* BAPU...**I. L. Rep. 1 Bom. 550.**

ASURA MARRIAGE.

See **Hindu Law — Marriage in Asura Form.**

JAIKISONDAS *v.* HARKISONDAS...**I. L. Rep. 2 Bom. 9.**

ATTACHING CREDITORS—Priority.

See **Execution of Decree. 7.**

NARANDAS *v.* BAI MANCHHA ... **I. L. Rep. 3 Bom. 217.**

—— Priority between.

See **Limitation. 54.**

RAM KISHAN *v.* BHAWANI DAS...**I. L. Rep. 1 All. 333.**

—— Priority—Surplus Sale—Proceeds.

See **Sale in Execution of Decree. 14.**

MANIK SINGH *v.* PARAS RAM...**I. L. Rep. 1 All. 727.**

ATTACHMENT—Alienation of Property under—valid when Attachment not properly published.

See **Civil Procedure Code, Act VIII. of 1859, § 240. 1.**

NUR MAHOMED *v.* ALTAF ALI...**I. L. Rep. 2 All. 58.**

ATTACHMENT—*contd.*

—— Alienation of Property—When not a Subsisting—Alienation valid.

See **Civil Procedure Code, Act VIII. of 1859, § 240. 2.**

ZAIB-UN-NISSA *v.* JAIRAM GIR...**I. L. Rep. 1 All. 616.**

—— Of Bonds.

See **Civil Procedure Code, Act X. of 1877, § 268.**

NURSINGDAS *v.* TULSIRAM...**I. L. Rep. 2 Bom. 558.**

—— Of Coparceners' Interest in Undivided Ancestral Property.

See **Bombay Act V. of 1862.**

ARDASIR *v.* MUSE...**I. L. Rep. 1 Bom. 601.**

See **Civil Procedure Code, Act VIII. of 1859, § 269.**

KALAPA *v.* VENKATESH.....**I. L. Rep. 2 Bom. 676.**

See **Hindu Law—Alienation of Ancestral Property. 1. 2. 3. 4. 5.**

BHIKAN DAS *v.* PURA...**I. L. Rep. 2 All. 141.**

GIRDHARI LAL *v.* KANTOO LAL... **L. Rep. 1 I. A. 321.**

PHOOLBAS KOONWAR *v.* LALLA J. SAHOY...**L. Rep. 3 I. A. 7; I. L. Rep. 1 Cal. 226.**

SURAJ BUNSI KOER *v.* SHEO PARSHAD SING...**L. Rep. 6 I. A. 88.**

JALLIDAR SING *v.* RAM LAL...**I. L. Rep. 4 Cal. 723.**

See **Hindu Law—Liability of Ancestral Property in the hands of the Heirs for the Debts of the Ancestors.**

NARRAYAN *v.* NARSO...**I. L. Rep. 1 Bom. 262.**

See **Hindu Law—Undivided Family. 3. 4. 7. 8.**

DEENDAYAL *v.* JUGDEEP...**L. Rep. 4 I. A. 147; I. L. Rep. 3 Cal. 198.**

RAI NARAIN DAS *v.* NOWNIT LAL. **I. L. Rep. 4 Cal. 809.**

LUCHMI DAI KOER *v.* ASMAN SINGH.....**I. L. Rep. 2 Cal. 213.**

BABAJI *v.* VASADEV.....**I. L. Rep. 1 Bom. 95.**

Digitized by Google

ATTACHMENT—*contd.*

See **Sale in Execution of Decree. 10. 15.**

VENKATARAMAYYAM *v.* VENKATASUBBRAMANIYA...**I. L. Rep. 1 Mad. 358.**

VENKATASAMI NAIK *v.* KUPPAIYAN. **Ibid. 354.**

—— Estate under—Sale for Arrears of Revenue—Notice.

See **Act XI. of 1859, § 5.**

BANWAREE LALL *v.* MOHABEER PROSHAD...**L. Rep. 1 I. A. 89.**

—— Limitation to Suit to recover Property placed under—under Act XXV. of 1861, Chap. XXII.

See **Limitation. 43.**

AKILANDAMMAL *v.* PERIASAMI...**I. L. Rep. 1 Mad. 309.**

—— Of *Malikana* Rights payable for ever.

See **Execution of Decree. 10.**

NILKUNTO *v.* HURRO SOONDEREE. **I. L. Rep. 3 Cal. 414.**

—— By Mofussil Court of Property in hands of Receiver of High Court.

See **Receiver, Property in hands of**

HEMCHUNDER CHUNDER *v.* PRANKRISTO CHUNDER...**I. L. Rep. 1 Cal. 403.**

—— Of Money-Decree.

See **Civil Procedure Code, Act X. of 1877, § 273.**

SULTAN KUAR *v.* GULZARI LAL **I. L. Rep. 2 All. 290.**

—— Priority.

See **Limitation. 54.**

RAMKISHEN *v.* BHAWANI DAS...**I. L. Rep. 1 All. 333.**

See **Registration. 20.**

AHMAD BAKSH *v.* GOBINDI...**I. L. Rep. 2 All. 216.**

—— Will—*Dewuttur*—Gift of Surplus Interest—Inconsistent Conditions.

See **Hindu Law—Will. 13.**

ASHUTOSH *v.* DURGA CHURN...**L. Rep. 6 I. A. 182.**

—— *Assignment — Surety — Principal — Payment.*] The plaintiff was nominally surety, though really the principal, in the case of two contracts entered into by one Rehmu with the Executive Engineer, Ahmednagar. The plaintiff's position was known to the Executive Engineer. Rehmu executed a document authorizing the plaintiff to receive such sums as should become due in respect of the works.

On the completion of the works, the Executive Engineer handed over to the plaintiff, with Rehmu's assent, a cheque on the Government treasury for the amount due on the first contract. Before the cheque was presented by the plaintiff for payment, the defendant, who was a judgment creditor of Rehmu, served the Executive Engineer with a notice attaching any moneys in his hands due by him to Rehmu. The Executive Engineer thereupon stopped payment of the cheque, the amount of which was eventually paid to the defendant:—

Held, that at the date of the notice of attachment there was nothing left on which it could operate, as the cheque had become the property of the plaintiff, and that the defendant should refund the amount received by him.

The second contract was sold to the plaintiff by Rehmu, and the account in the Executive Engineer's office relating to it, was closed, showing a sum of money to Rehmu's credit at the date of the defendant's attachment:—

Held, that the plaintiff, being the only person really interested, was entitled to this sum also; for, although the Executive Engineer would have been legally justified in paying it to Rehmu, he was not bound, it being really the plaintiff's property, to pay it to a third person such as the defendant, the judgment-creditor, who, if the sum was paid to him, must refund it to the plaintiff. BHAGVANDAS KISHORDAS *v.* ABDUL HUSEIN MAHOMED ALI. *West* and *Pinhey*, JJ.....**I. L. Rep. 3 Bom. 49, 1878.**

ATTACHMENT OF PROPERTY, OF THIRD PERSON—Liability of Execution Creditor in Damages for—Loss of Property while under Attachment.

See **Liability of Execution Creditor in Damages for Wrongful Seizure.**

GOPAL *v.* GOKALDAS...**I. L. Rep. 3 Bom. 74.**

Digitized by Google

ATTACHMENT OF UNRECOGNIZED PORTION OF A BHAG IN A BHAGDARI OR NARWADARI VILLAGE.

See **Bombay Act V. of 1862.**

RANCHODAS *v.* RANCHODAS...**I. L. Rep. 1 Bom. 581.**

ARDASIR *v.* MUSE...**I. L. Rep. 1 Bom. 601.**

ATTEMPT.

See **Fabricating False Evidence.**

EMPRESS *v.* MULA...**I. L. Rep. 2 All. 105.**

1. —— *Bigamy—Penal Code*, §§ 494, 511—*Publication of Banns of Marriage.*] The act of causing the publication of banns of marriage with another woman, by a man having a wife living at the time of such publication, does not constitute the offence of attempting to marry again during the life-time of his wife. REG. *v.* PETERSON. *Pearson*, J....**I. L. Rep. 1. All. 36, 1876.**

2. —— *To obtain a Bribe—Penal Code*, §§ 161, 511.] To ask for a bribe is an attempt to obtain one; and a bribe may be asked for as effectually in implicit as explicit terms.

Where, therefore, the accused, who was a clerk in the Pension Department, in an interview with *A.*, who was an applicant for a pension (having previously informed *A.* that, as the fact was, there had been an anonymous petition received in the Accountant General's Office, against *A.*'s right to the pension, and having also falsely asserted to *A.* that there were still difficulties in the way of his, *A.*'s, getting his full pension), after referring to his own influence in the office and instancing two cases in which by that influence increased pensions had been obtained, proceeded to intimate that anything might be effected by *Kar-rawai*, and on the overture being rejected, concluded by declaring that *A.* would "rue and repent it":—*Held*, that the offence of attempting to obtain a bribe was consummated. EMPRESS *v.* BALDEO SAHAI. *Pearson* and *Oldfield*, JJ...**I. L. Rep. 2 All. 253.**

S. C. under **Practice—Criminal. 1.**

ATTESTATION OF CONFESSION WHEN UNNECESSARY.

See **Evidence. 16.**

And *see* **Criminal Procedure Code, Act X. of 1872, § 346.**

CHUMMAN SHAH...**I. L. Rep. 3 Cal. 756.**

ATTESTATION OF MORTGAGE DEED BY PRIOR MORTGAGEE.

See **Constructive Fraud.**

SALAMAT ALI *v.* BUDH SINGH...**I. L. Rep. 1 All. 303.**

ATTESTATION OF VILLAGE ADMINISTRATION PAPER OR WAJIB-UL-ARZ BY LESSEE.

See **Pre-emption. 10.**

CHADAMI LAL *v.* MUHAMADBAKSH. **I. L.Rep. 1 All. 563.**

ATTESTATION OF WILL—Of Hindu.

See **Hindu Law—Will. 2.**

RADHABAI *v.* GANESH...**I. L. Rep. 3 Bom. 7.**

—— Signature necessary—Mark insufficient.

See **Indian Succession Act X. of 1865, § 50, Cl. 3.**

FERNANDEZ *v.* ALVES...**I. L. Rep. 3 Bom. 382.**

—— *Act X. of* 1865, § 50—*Form of Attestation—Hindu Will.*] By the Indian Succession Act X. of 1865, § 50, no particular form of attestation is required; therefore, where to a document purporting to be her last will and testament the name of the testatrix was written by *A.*, and the testatrix in his presence affixed her mark, and *A.*, in her presence wrote beneath it "by the pen of *A.*;" and the testatrix was then identified to the Registrar, who was present, by *B.*, who had seen her affix her mark to the will, and who in her presence put his signature as having identified her:—

Held, a sufficient attestation, and probate was granted. *In the Goods of* ROYMONEY DOSSEE. *Phear*, J.....**I. L. Rep. 1 Cal. 150, 1875.**

ATTORNEY AND CLIENT—Bill of Costs—Limitation.

See **Limitation. 57.**

HEARN *v.* BAPU NAIKIN ..... **I. L. Rep. 1 Bom. 505.**

—— Bill of Costs—Right to tax after Declining.

See **Attorney and Client. 2.**

—— Communications by Client in presence of Third Person.

See **Privileged Communication. 2.**

MEMON HAJI *v.* MOLVI ABDUL...**I. L. Rep. 3 Bom. 91.**

—— Fiduciary Relationship.

See **Attorney and Client. 1.**

Digitized by Google

ATTORNEY AND CLIENT—*contd.*

—— Lien for Costs.

See **Mortgage. 38.**

BRIJNATH *v.* JUGGERNATH ... **I. L. Rep. 4 Cal. 742.**

1. —— *Application under Rule* 149 *of the Common Law Rules of the Supreme Court—Limitation—Suit.*] An application by an attorney, under Rule 149 of the Common Law Rules of the late Supreme Court, that his client should show cause why he should not pay the balance due on the *allocatur* of the Taxing Master, and why, in default of such payment, attachment should not issue against the person and property of the client, is not a "suit" within the meaning of Act IX. of 1871. There is no limitation applicable to such an application. ABBA HAJI ISHMAIL *v.* ABBA THARA. *Bayley*, J...**I. L. Rep. 1 Bom. 253, 1876.**

Westropp, C.J., and *Sargent*, J., said, on an application by the defendant to reverse this decision, that they considered the order of *Bayley*, J., "perfectly right."

2. —— *Fiduciary Relationship—Compound Interest—Rate of Interest.*] The plaintiff, an attorney of the High Court, made advances to the defendant, a native banker and merchant, for whom he had been, and then was, acting as attorney in certain litigation in the High Court. At the time of the first advance, the defendant was in difficulties about money; and one creditor had issued execution against his property. The plaintiff's firm had also an unsettled claim against the defendant for costs for upwards of Rs. 23,000, but for which they had not up to that time delivered any bills of costs. Before the first loan the plaintiff made out and delivered bills for all his costs due up to that time, in all forty-six bills of costs; and also a general account showing what was then due for costs. The plaintiff offered to tax such of the bills as were taxable, but the defendant said there was no necessity for it, as the costs of taxation would only increase his expenses. The plaintiff then advanced Rs. 34,000, out of which the defendant discharged a number of his debts, including the plaintiff's costs, the larger portion of which had been incurred in suits then completed, but some portion were costs incurred in pending suits. The defendant executed a mortgage to the plaintiff in 1869, by which the principal sum of Rs. 34,000 was made repayable in 1871, and the interest thereon was fixed at 12 per cent. per annum, payable quarterly. Compound interest was also to be charged on all interest in arrear at the rate of Rs. 12 per cent. The plaintiff made a further advance of Rs. 2,546 in September 1870, and a further mortgage was executed by the defendant for Rs. 41,000, *i. e.*, the original Rs. 34,000, the interest thereon up to that date and the further advance,—upon the same terms as to interest as were contained in the first mortgage. Further advances were made in the same way in October 1871 and March 1876, and similar mortgages executed by the defendant, all of which were prepared in the plaintiff's office, but were not charged for. It was admitted that in all these transactions the defendant had no independent professional advice. The plaintiff was the defendant's general professional adviser, until the time of the present suit which he instituted, asking for a sale of the mortgaged property to satisfy his claims. The plaintiff abandoned any accumulations of interest since the date of the third mortgage:—

ATTORNEY AND CLIENT—*contd.*

Held, that having regard to the relation between the parties and the circumstances of the case, the defendant had not lost his right to have the plaintiff's bills of costs taxed and the account re-opened by reason of his refusal of the plaintiff's offer to tax in 1869, notwithstanding the delay that had taken place since the bills were delivered. Under the circumstances the Court would not infer acquiescence from that delay, nor would the bare offer by the plaintiff to have the bills taxed, and the defendant's rejection of that offer, deprive the latter of that right which he originally had to have the bills taxed.

Held also, that there is no rule which prevents an attorney from taking security or otherwise arranging with his client for the payment of costs which have actually become due, or from agreeing for any fair amount of interest in making such an arrangement, and that the plaintiff was entitled to a sale of the property, to accumulations of interest prior to the date of the third mortgage,—calculated by allowing annual rests,—to interest at 10 per cent., as being a fair rate for the client to have undertaken to pay when the mortgages were executed, and to interest on his costs. MONOHUR DOSS *v.* ROMONAUTH LAW. *Garth*, C.J., and *Markby*, J .....**I. L. Rep. 3 Cal. 473, 1887.**

Digitized by Google

AUCTION PURCHASER AT EXECUTION SALE—Appeal by—from Order setting aside Sale.

See **Appeal—Civil. 22.**

GOPAL SINGH *v.* DULAR KUAR... **I. L. Rep. 2 All. 352.**

—— Assignment by.

See **Hindu Law—Sale of Land. 1.**

See **Sale in Execution of Decree. 1.**

GOVIND *v.* GOVIND...**I. L. Rep. 1 Bom. 500.**

—— Right of—to enhance Rent.

See **Bengal Reg. XLIV. of 1793, § 5.**

MOHINY *v.* ICHAMOYEE.....**I. L. Rep. 4 Cal. 612.**

AUCTION PURCHASER AT SALE UNDER BENG. REG. VIII. OF 1819—*Onus Probandi* in Suit against—for Resumption.

See **Onus Probandi. 3.**

ARFUNNESSA *v.* PEARY MOHUN...**I. L. Rep. 1 Cal. 378.**

AUTHORITY TO ADOPT GRANTED BY A MINOR—Beng. Reg. X. of 1793, § 33.

See **Hindu Law—Adoption. 10.**

JAMOONA DASSYA *v.* BAMASOONDERAI...**L. Rep. 3 I. A. 72; I. L. Rep. 1 Cal. 289.**

AUTHORITY OF AGENT—To Bind Principal by Compounding Criminal Charge against Agent.

See **Duress.**

MOUNG SHOAY ATT *v.* KO BYAW... **L. Rep. 3 I. A. 61; I. L. Rep. 1 Cal. 330.**

AUTHORITY OF CASTE TO DECLARE MARRIAGE VOID.

See **Penal Code, § 494.**

REG. *v.* SAMBHU...**I. L. Rep. 1 Bom. 347.**

AUTHORITY OF LESSEE TO BIND OWNER BY ATTESTING VILLAGE ADMINISTRATION PAPER.

See **Pre-emption. 10.**

CHADAMI LALL *v.* MUHAMMAD BAKSH...**I. L. Rep. 1 All. 563.**

AVOIDANCE OF CONTRACT—Duress.

See **Duress.**

MOUNG SHOAY ATT *v.* KO BYAW... **L. Rep. 3 I. A. 61; I. L. Rep. 1 Cal. 330.**

AWARD—Appeal from Order directing the Filing of an.

See **Appeal—Civil. 13. 13a.**

HUSSAINI BIBI *v.* MOHSIN KHAN... **I. L. Rep. 1 All. 156.**

RAMADHIN *v.* MAHESH...**I. L. Rep. 2 All. 471.**

See **Arbitration. 4. 6.**

BOONJAD MATHOOR *v.* NATHOO SHAHOO...**I. L. Rep. 3 Cal. 375.**

VISHNU *v.* RAVJI...**I. L. Rep. 3 Bom. 18.**

—— Application to File an—Course to be pursued when Reference to Arbitration denied.

See **Appeal—Civil. 13.**

And *see* **Arbitration. 5.**

HUSSAINI BIBI *v.* MOHSIN KHAN.. **I. L. Rep. 1 All. 156.**

—— Application to File—Jurisdiction.

See **Suit for Land. 3.**

KELLIE *v.* FRASER...**I. L. Rep. 2 Cal. 445.**

—— Application to File—Setting aside Award—Acquiescence in Proceedings of Arbitrators.

See **Arbitration. 7.**

CHOWDHRI MURTAZA *v.* MUSST. BIBI BECHUNNISSA...**L. Rep. 3 I. A. 209.**

—— Of Arbitrators made without Intervention of Court—Decree—Appeal.

See **Arbitration. 4. 6.**

BOONJAD MATHOOR *v.* NATHOO SHAHOO...**I. L. Rep. 3 Cal. 375.**

VISHNU *v.* RAVJI.....**I. L. Rep. 3 Bom. 18.**

—— Finality and Validity of.

See **Arbitration. 4.**

BOONJAD *v.* NATHOO...**I. L. Rep. 3 Cal. 375.**

—— Refusal to confirm an—Appeal.

See **Appeal—Civil. 34.**

HOWARD *v.* WILSON...**I. L. Rep. 4 Cal. 231.**

Digitized by Google

AWARD—*contd.*

—— Remission of—not Illegal on its Face—for Reconsideration.

See **Arbitration. 3.**

NANAH CHAND *v.* RAM NARRAYAN. **I. L. Rep. 2 All. 181.**

—— Validity of — founded on Evidence taken on Oath illegally administered.

See **Oaths' Act X. of 1873, §§ 8, 10, 13.**

WALI-UL-LA *v.* GHULAM ALI...**I. L. Rep. 1 All. 535.**

—— *Subordinate Judge—Power of, to file Award—Small Cause Court—Act X. of* 1877, § 525.] A Subordinate Judge, though invested with the jurisdiction of a Court of Small Causes, does not, by exercising it, become on that account a Judge of a Court of Small Causes, or his Court such a Court, within the meaning of the Civil Procedure Code (Act X. of 1877). Awards, therefore, of any amount within the ordinary pecuniary jurisdiction of a Subordinate Judge may properly be received and filed by him under § 525 of Act X. of 1877, even where a Small Cause Court exists, the exercise of whose jurisdiction excludes for some purposes the jurisdiction of the Subordinate Judge, because the jurisdiction of the Small Cause Court is, as to such a matter, excluded. BALKRISHNA *v.* LAKSHMAN. *West* and *Pinhey*, JJ.....**I. L. Rep. 3 Bom. 219, 1879.**

BAIL—Convicted Person—Power of Sessions Judge to admit to—where no Appeal lies.

See **Criminal Procedure Code, Act X. of 1872, § 390. 1.**

REG. *v.* THAKUR PARSHAD...**I. L. Rep. 1 All. 151.**

BALAMBHATTA—Authority of.

See **Hindu Law—Authority of Writers. 5.**

MORARJI GOKALDAS *v.* PARVATIBAI.....**I. L. Rep. 1 Bom. 177.**

BALANCE OF ACCOUNT—Bond to secure.

See **Bond to secure Balance of Account.**

NARRAYAN *v.* MOTILAL...**I. L. Rep. 1 Bom. 45.**

—— Suit for—Jurisdiction of Mofussil Small Cause Court.

See **Small Cause Court—Mofussil. 7.**

DYEBUKEE *v.* MUDHOO...**I. L. Rep. 1 Cal. 123.**

BALANCE ORDER.

See **Company—Winding up—Contributory.**

THE LONDON, BOMBAY, AND MEDITERRANEAN BANK *v.* BHANJI ZUTANI...**I. L. Rep. 2 Bom. 116.**

BALUTA—*Suit for—Small Cause Court—Jurisdiction.*] A suit to recover *Baluta* leviable on the crops of village lands is not a suit for an interest in land, but for a share in produce severed from the land, and is cognizable by a Mofussil Small Cause Court. NARU PIRA *v.* NARO SHIDDESHVAR. *West* and *Pinhey*, JJ...**I. L. Rep. 3 Bom. 28, 1878.**

BANDHUS.

See **Hindu Law — Inheritance—Father's Sister's Son.**

THAKOOR JEEBNATH *v.* COURT OF WARDS...**L. Rep. 2 I. A. 163.**

BANK MEMORANDUM ADVISING RECEIPT OF MONEY FOR CUSTOMER'S ACCOUNT FROM THIRD PERSON — Requires no Stamp.

See **Stamp. 6.**

In the matter of ACT XVIII. OF 1869, and of THE UNCOVENANTED SERVICE BANK..... **I. L. Rep. 4 Cal. 829 ; 3 Cal. Rep. 597.**

BANKRUPTCY OF ACCEPTOR OF HUNDI.

See **Procedure—Civil. 1.**

BASANT RAM *v.* KOLAHAL...**I. L. Rep. 1 All. 392.**

BARRED DECREE—ACKNOWLEDGEMENT OF.

See **Kistbandi.**

HEERA LALL MOOKHOPADHYA *v.* DHUNPUT SINGH...**I. L. Rep. 4 Cal. 500.**

See **Limitation. 43. 44.**

KALLY P. HAZRA *v.* HEERA LALL. **I. L. Rep. 2 Cal. 468.**

MUNGOL P. DICHIT *v.* SHAMA K. L. CHOWDHRY ... **I. L. Rep. 4 Cal. 708.**

Digitized by Google

BENAMI PURCHASE.

See **Civil Procedure Code, Act VIII. of 1859, § 260. 1. 2. 3.**

LOKHEE NARRAIN *v.* KALYPUDDO... **L. Rep. 2 I. A. 154.**

PURAN MAL *v.* ALI KHAN...**I. L. Rep. 1 All. 235.**

JAN MUHAMMAD *v.* ILAHI BAKSH... **I. L. Rep. 1 All. 290.**

BENCH OF MAGISTRATES—Jurisdiction of.

See **Criminal Procedure Code, Act X. of 1872, § 530. 5.**

SUFFERUDDIN *v.* IBRAHIM...**I. L. Rep. 3. Cal. 754.**

BENGAL ACT III. OF 1864—*Public Highways—Power of Municipal Commissioner to close or divert*—] Bengal Act III. of 1864, which vests public highways in Municipal Commissioners for the purposes of the Act does not by so vesting them give power to the Municipal Commissioners, nor *á fortiori* to the Vice-Chairman alone, to stop up or divert such public highways. EMPRESS *v.* PROJONATH DEV. *Markby* and *Prinsep*, JJ.....**I. L. Rep. 2 Cal. 425, 1877.**

See FAZAL HAQ *v.* MAHA CHAND...**I. L. Rep. 1 All. 557.**

Under **Right to sue. 4.**

—— § 33—*Appeal against Assessment by Municipal Commissioner.*] A suit to set aside an order made on appeal under § 33 of Beng. Act III. of 1864 to the Municipal Commissioners against a rate of assessment, and to reduce the tax levied by them under that Act, on the ground that they have tried the appeal in an improper way, and have exceeded their powers and acted contrary to the provisions of the Act, cannot be maintained in the Civil Courts. The decision of the Commissioners in such appeal is absolutely final. MANESSUR DASS *v.* THE COLLECTOR AND MUNICIPAL COMMISSIONERS OF CHAPRA. *Garth*, C.J., and *Mitter*, J...**I. L. Rep. 1 Cal. 409, 1876.**

BENGAL ACT II. OF 1867—§§ 5 and 6—Unauthorized Entry and Arrest of Gamblers—Direct Evidence of House being Gaming-house.

See **Gambling. 1.**

NAZIR KHAN *v.* PROLADH DUTTA... **I. L. Rep. 4 Cal. 659.**

BENGAL ACT II. OF 1867—*contd.*

—— §§ 5 and 6—Gambling—Gaming-house—Evidence—Unauthorized Entry and Arrest.

See **Gambling. 2.**

SREERAM CHANDRA *v.* BIPINDASS...**I. L. Rep. 4. Cal. 710.**

BENGAL ACT VII. OF 1868.

See **Certificate Proceedings under Bengal Act VIII. of 1868.**

HEM LOTTA *v.* SREEDHONE BOROOA. **I. L. Rep. 3 Cal. 771.**

BENGAL ACT VIII. OF 1869—*Holdings not liable to enhancement* (Guzashta Kasht)—*Suit for Removal of Buildings.*] A ryot who relies upon an occupancy right must be taken as thereby admitting that the letting was of such a character as is contemplated by Bengal Act VIII. of 1869, which applies only to agricultural holdings. If land is let on the understanding that it is to be used for cultivation, the fact that the ryot has acquired a right of occupancy does not alter any of the terms of the letting, except the conditions (if any) fixing a term for the tenancy.

The statutory right of occupancy cannot be extended so as to make it include complete dominion over the land, subject only to the payment of a rent liable to be enhanced on certain conditions. The landlord is still entitled to insist that the land shall be used for the purposes for which it was granted, and although a liberal construction may be adopted, it cannot extend to a complete change in the mode of enjoyment. LAL SAHOO *v.* DEY NARAIN SINGH. *Ainslie* and *McDonnell*, JJ...**I. L. Rep. 3 Cal. 781; 2 Cal. Rep. 294, 1878.**

See **Landlord and Tenant. 2.**

—— § 4—Right of Purchaser at Revenue Sale to enhance Rent—Presumption in favour of *Mokurari* Tenure.

See **Enhancement of Rent. 1.**

PURMANUND *v.* ROOKINEE...**I. L. Rep. 4 Cal. 793.**

—— § 14—Notice of Enhancement.

See **Enhancement of Rent. 8.**

EKRAM MUNDUL *v.* HOLODHUR PAL...**I. L. Rep. 3 Cal. 271.**

—— § 14—*Service of Notice of Enhancement of Rent—Joint Hindu Family.*] Where a joint Hindu family owns a tenure, it is sufficient service of notice of enhancement of rent, under Bengal Act VIII. of 1869, if any one of the co-

Digitized by Google

BENGAL ACT VIII. OF 1869—*contd.*

sharers is served with the notice. NOBODEEP CHUNDER SHAHA *v.* SONARAM DASS. *Mitter* and *Maclean*, JJ.....**I. L. Rep. 4 Cal. 592 ; 3 Cal. Rep. 359, 1878.**

—— § 14—**2.** *Stipulation in* Potta *for Increase of Rental to be made yearly—Suit to recover Rent as per* Potta—*Notice of Enhancement.*] Where a *potta* in its terms expressly stipulates for an increase of rental according as the lands let are brought under cultivation, and a measurement taken, a landlord is entitled to recover such increased rent as agreed upon in the *potta* without serving on the tenants any notice under § 14 of Bengal Act VIII. of 1869. NISTARIN DASI *v.* BONOMALI CHATTERJI.....**I. L. Rep. 4 Cal. 941; 4 Cal. Rep. 278, 1879, F. B.**

See **Enhancement of Rent. 8.**

EKRAM MUNDUL *v.* HOLODHUR PAL...**I. L. Rep. 3 Cal. 271.**

—— § 17—Right of Purchaser at Revenue Sale to enhance Rent—Presumption in favour of *Mokurari* Tenures.

See **Enhancement of Rent. 1.**

PURMANUND *v.* ROOKINEE...**I. L. Rep. 4 Cal. 793.**

—— §§ 21 *and* 52—*Ejectment—Arrears of Rent*—Bhaoli *Rent—Compensation for Occupation of Land—Decree.*] Under the provisions of Bengal Act VIII. of 1869, a suit will lie for ejectment on non-payment of arrears of rent due on a *bhaoli* tenure, §§ 2 and 21 and 52 covering not only rent reserved in money, but rent reserved in kind. A suit to recover compensation for the use and occupation of land is not a suit for arrears of rent due under § 52 of Bengal Act VIII. of 1869. Where the decree under that section (by which the defendant was directed to pay a certain amount as arrears of rent within 15 days, otherwise he was to be ejected) comprised a sum found due for such compensation :—*Held*, that the whole decree was vitiated. The tenant is to be ejected, under § 52 of Bengal Act VIII. of 1869, if he does not pay the amount of rent specified in the decree. But the amount specified in the decree must consist entirely of rent due. And if it turns out that there was not really so much arrears of rent due, the tenant never has had the opportunity, which the law gives him, to pay within 15 days that which he is liable to pay as arrears of rent. KISHEN GOPAUL MAWAR *v.* BARNES. *Markby* and *Prinsep*, JJ.....**I. L. Rep. 2 Cal. 374, 1877.**

BENGAL ACT VIII. OF 1869—*contd.*

—— § 27—**1.** *Ejectment, Suit for—Limitation—Suit for Possession on Declaration of Title.*] The only remedy for a person in the position of an occupancy ryot, who alleges that he has been ejected in contravention of the proviso to § 22, Bengal Act VIII. of 1869, is a suit on the ground of the illegal ejectment, and such suit must, under § 27, Bengal Act VIII. of 1869, be brought within one year from the ejectment. GOLABOLEE *v.* KOOTOSBOLLAH SIRCAR. *Mitter* and *Maclean*, JJ.....**I. L. Rep. 4 Cal. 527, 1878.**

—— § 27—**2.** *Limitation—Suit for Possession with Mesne Profits*—Howla *Rights—Title.*] A suit for possession of certain lands "by establishing the plaintiff's *howla* right," and for mesne profits, brought against a shareholder of the talook in which the lands are situated, (and who denies the existence of the alleged *howla* right), a former talookdar, and certain ryots who paid rent to the first defendant, is not a suit to recover the occupancy of the land from which the plaintiff has been illegally ejected by the person entitled to receive the rent, within the meaning of Beng. Act VIII. of 1869, § 27, and is not governed by the limitation provided by that section. KHAJAH ASHANOOLLAH *v.* RAMDHONE BHUTTACHARJEE. *Jackson* and *McDonnell*, JJ... **I. L. Rep. 1 Cal. 325, 1876.**

—— § 29—Suit for Arrears of Rent—Expiration of three years during Vacation—Plaint presented on Re-opening of Court—Suit barred.

See **Limitation. 13.**

PURRAN CHUNDER *v.* MUTTY LALL. **I. L. Rep. 4 Cal. 50.**

—— § 29—Suit for Rent—Limitation not prevented from running against—by Landlord's Denial of Tenancy, and Suit to eject.

See **Limitation. 4.**

And **Res Judicata. 18.**

WATSON & Co. *v.* DHONENDRA... **I. L. Rep. 3 Cal. 6.**

—— § 29—Suit for Arrears of Rent—Limitation—Deduction of Time occupied in Unsuccessful Enhancement Suit not allowed.

See **Limitation. 9.**

BROJENDRO *v.* RAKHAL CHUNDER... **I. L. Rep. 3 Cal. 791.**

Digitized by Google

BENGAL ACT VIII. OF 1869—*contd.*

—— § 29—Suit for Arrears of Rent—Limitation—Deduction of Time occupied in Unsuccessful Suit for *Khas* Possession not allowed.

See **Limitation. 10.**

HURRO PROSHAD *v.* GOPAUL DASS. **I. L. Rep. 3 Cal. 817.**

—— § 29—**1.** *Limitation—Computation of Time according to English Calendar.*] *Held*, in accordance with former decisions of the High Court, that for the purpose of computing the period of limitation prescribed by § 29 of Bengal Act VIII. of 1869, the calculation is to be made according to the English Calendar. MAHOMED ELAHEE BAKSH *v.* BROJOKISHORE SEN. *Mitter* and *Maclean*, J.J.....**I. L. Rep. 4 Cal. 497, 1878.**

—— § 31—*Suit for Arrears of Rent—Payment into Court—Limitation.*] By a condition in the lease of a talook, additional rent became payable in respect of all lands which, not being in a state of cultivation at the time of the lease, should be subsequently brought into cultivation, so soon as the lessee had enjoyed them rent-free for the space of seven years.

Rent having become due under this condition on certain lands which had not been in a state of cultivation at the time of the making of the lease, the lessee deposited in Court, as the entire rent payable in respect of the talook, the same amount as he had paid in previous years.

In a suit brought a year after the lessor had notice of such deposit, to recover the entire rent payable in respect of the lands newly brought into cultivation:—

Held, that such suit having been instituted more than six months after service of notice of such deposit on the lessor, was barred under § 31 of Bengal Act VIII. of 1869. RAM SUNKER SENAPUTTY *v.* BIR CHUNDER MANIKYA. *Jackson* and *Tottenham*, JJ.....**I. L. Rep. 4 Cal. 714, 1878.**

—— § 58—*Application for Execution of Decree for Arrears of Rent—Limitation—Circular Order, 10th July 1874.*] The words "no process of execution of any description whatsoever shall be issued on a judgment in any suit * * after the lapse of three years," in § 58 of Beng. Act VIII. of 1869, mean, that execution shall not issue unless a proper application for execution is made within three years from the date of the judgment. Therefore where, on an application made on the 5th July 1875 for execution of a decree for arrears of rent obtained on the 31st of January 1873, a warrant for the arrest of the judgment debtors was issued, but not executed, a subsequent application for execution of the same decree made on the 17th March 1876, was held not to be barred. The law as laid down in *Rhiday Krishna Ghose v. Khailas Chandra Bose* (4 Beng. L. Rep. F. B. 82; 13 W. Rep. F. B. 3) is not affected by the Circular Order No. 18 of the 10th July 1874. GOLOKEMONEY DABIA *v.* MOHESH CHUNDER MOSA. *Markby* and *Mitter*, JJ. ...**I. L. Rep. 3 Cal. 547, 1877.**

—— §§ 59, 60, 66—Sale of Under-Tenure—Right of Purchaser.

See **Execution of Decree. 8.**

DOOLAR CHAND *v.* LALLA CHABEEL.....**L. Rep. 6 I. A. 47.**

—— § 61—*Under-Tenure—Arrears—Sale in Execution—Execution against other Property.*] The plaintiff obtained two decrees againt one *B.*; the first an ordinary money-decree, the other a decree for the rent of certain tenures. In execution of the money decree, the plaintiff sold *B.*'s right, title and interest in the tenures, and afterwards in execution of his decree for rent, again put up the same tenure for sale. At this sale, the defendant became the purchaser of whatever could pass under such sale. The plaintiff subsequently sued and obtained a decree against the defendant for arrears of rent due on the said tenures since the last-mentioned sale, and attached the tenures in execution of that decree. Third parties intervening, the tenures were released from attachment; and the plaintiff then sought to levy execution on other immoveable property of the defendant:—

Held, that the tenures not having been sold, but having been released from attachment, the plaintiff was not entitled to proceed to execution against any other immoveable property of the defendant, under § 61 of Beng. Act VIII. of 1869, it being open to him to show by a regular suit that the tenures were liable to be sold in execution of his decree, and further, that upon the facts of the case the plaintiff was not entitled to the equitable relief he sought. Whatever may be the rights of a zemindar holding a decree for rent against one of his tenants in respect of the sale of the tenure on which the arrears have

Digitized by Google

BENGAL ACT VIII. OF 1869—*contd.*

accrued, when such rights are put forward in opposition to the rights of third parties, it is impossible for any zemindar to put forward a claim under the rent law which shall take effect against his own acts done, as in the present case, under the Civil Procedure Code. HARRISH CHUNDER ROY *v.* THE COLLECTOR OF JESSORE. *Ainslie* and *Morris*, JJ...**I. L. Rep. 3 Cal. 712, 1878.**

—— § 66—*Growing Crops—Sale of Under-Tenure.*] At a sale of an under-tenure for arrears of rent under § 66 of Bengal Act VIII. of 1869, the growing crop standing on the land passes to the purchaser at the auction-sale, unless it has been specially excepted by the notification of sale, or a custom to the contrary has been proved. AFATOOLLA SIRDAR *v.* DWARKANATH MOITRY. *Jackson* and *McDonnell*, JJ.....**I. L. Rep. 4 Cal. 814 ; 4 Cal. Rep. 95, 1879.**

—— § 98—*Suit for Value of Crops—Distraint—Jurisdiction—Small Cause Court.*] The defendant distrained certain crops belonging to the plaintiff, who subsequently complained to a Magistrate against the defendant, his landlord, for forcibly carrying away his crops; whereupon the defendant was tried, and convicted of theft, and punished. The plaintiff then instituted a suit in the Munsiff's Court, apparently under § 95 of Bengal Act VIII. of 1869, and obtained a decree declaring the distraint to be illegal, and directing the crops to be given up to him. The defendant offered to give up a smaller quantity than was mentioned in the decree. The plaintiff refused to take the same, and brought a suit in the Small Cause Court to recover the value of the quantity he claimed before the Munsiff, and something additional:—

Held, that the Small Cause Court had no jurisdiction, and that the suit ought to have been brought under § 98 of Bengal Act VIII. of 1869. HYDER ALI *v.* JAFAR ALI. *Garth*, C. J., and *Macpherson*, J.....**I. L. Rep. 1 Cal. 183, 1875.**

—— § 102—Special Appeal in Suit for Rent under Rs. 100.

See **Appeal—Civil. 32.**

LUNGESSUR KOER *v.* SOOKHA OJHA...**I. L. Rep. 3 Cal. 151 ; 1 Cal. Rep. 39.**

BENGAL CIVIL COURTS' ACT VI. OF 1871.

See **Appeal—Civil. 9.**

RUNJIT SINGH *v.* MEHERBAN KOER. **I. L. Rep. 3 Cal. 662.**

—— § 22—*Jurisdiction—Subject-matter in Dispute—Suit for Cancellation of a Bond.*] The plaintiffs sued for the cancellation of a bond for the payment of Rs. 6,000, with interest at the rate of four per cent. per mensem, alleging that they had executed such bond under the impression that it was a bond for the payment of Rs. 3,000 with interest at the rate of one and a half per cent. per mensem, whereas the defendants had fraudulently caused them to execute the bond in suit. The plaintiffs paid into Court Rs. 3,000 together with interest at the rate of one and a half per cent per mensem:—

Held, that the value of the subject-matter in dispute, was the difference between Rs. 3,000 and Rs. 6,000, or thereabouts, and therefore that an appeal from the Court of first instance preferred to the District Judge, was cognizable by him. KALI CHARAN RAI *v.* AJUDHIA RAI. *Pearson* and *Oldfield*, JJ.....**I. L. Rep. 2 All. 148, 1879.**

BENGAL ACT X. OF 1871.

See **Road Cess Act (Bengal Act X.) of 1871.**

BENGAL REGULATION VIII. OF 1793—§ 51.

See **Ghatwali Tenure.**

LEELANUND SINGH *v.* THAKOOR MUNRUNJUN...**I. L. Rep. 3 Cal. 251.**

—— § 51—Dependent Talook—Enhancement of Rent—Act X. of 1859, § 15.

See **Enhancement of Rent. 2.**

HURRONATH *v.* GOBIND CHUNDER. **L. Rep. 2 I. A. 193 ; 15 Beng. L. R. 120 ; 23 W. R. 352.**

—— § 56—*Tullubi Bromutter* Tenure—Notice of Enhancement.

See **Enhancement of Rent. 6.**

NIL MONEY *v.* CHUNDERKANT...**I. L. Rep. 2 Cal. 125.**

Digitized by Google

BENGAL REGULATION X. OF 1793—

§ 33—Minor—Authority to adopt.

See **Hindu Law—Adoption. 10.**

JUMOONA *v.* BAMASOONDERAI ... **L. Rep. 3. I. A. 72; I. L. Rep. 1 Cal. 289.**

BENGAL REGULATION XI. OF 1793—

Effect of—on Family Custom.

See **Family Custom.**

RAJKISHEN *v.* RAMJOY...**I. L. Rep. 1 Cal. 186; 19 W. R. 8.**

BENGAL REGULATION XV. OF 1793—

§§ 2 and 3.

See **Interest. 2.**

RAJA BARDA KANT RAI *v.* BHAGWAN DAS...**I. L. Rep. 1 All. 344.**

BENGAL REGULATION XXVI. OF 1793—§ 2—Minority.

See **Mahomedan Law—Gift. 2.**

AMEERONISSA *v.* ABEDOONISSA... **L. Rep. 2 I. A. 87; 15 Beng. L. R. 87; 23 W. R. 208.**

BENGAL REGULATION XLIV. OF 1793—§ 5—*Enhancement of Rent—Auction Purchaser, Right of.*] According to the decision of the Privy Council in *Ranee Surnomoyee* v. *Maharajah Suttees Chunder Roy Bahadoor* (10 Moo. I. A. 123), the right of an auction purchaser under § 5 of Bengal Regulation XLIV. of 1793, is limited to raising the rent of a taluk created by the defaulter to what is demandable from it according to the parganna rates prevailing either at the time when the taluk is created, or at the time when the auction purchase takes place. He cannot demand any higher rent, even if at any subsequent time such higher rent be in accordance with the prevailing current rate. MOHINY MOHUN ROY *v.* ICHAMOYEE DASSEEA. *Mitter* and *Maclean*, JJ...**I. L. Rep. 4 Cal. 612, 1878.**

—— § 7—Dependent Talook—Enhancement of Rent.

See **Enhancement of Rent. 2.**

HURRONATH *v.* GOBIND...**L. Rep. 2 I. A. 193.**

BENGAL REGULATION IV. OF 1797.

See **Offence committed before the Penal Code came into operation.**

EMPRESS *v.* DILJONO MISSER...**I. L. Rep. 2 Cal. 225.**

EMPRESS *v.* MULNA...**I. L. Rep. 1 All. 599.**

BENGAL REGULATION XVII. OF 1806—§§ 2 and 3.

See **Interest. 2.**

RAJA BARDA KANT *v.* BHAGWAN DAS...**I. L. Rep. 1 All. 344.**

—— § 8 — Foreclosure — Service of Notice—Proof—Judge's Office Ministerial—Admission of Service by some of several Mortgagors.

See **Mortgage. 13. 14.**

NORENDER *v.* DWARKA LAL...**L. Rep. 5 I. A. 18; I. L. Rep. 3 Cal. 397.**

BANK OF HINDUSTAN, CHINA, AND JAPAN *v.* SHOROSHIBLA DEBEE. **I. L. Rep. 2 Cal. 311.**

—— § 8—1. *Mortgage—Foreclosure — Notice.*] Where land which has been conditionally sold, is subsequently mortgaged, the second mortgagee, being the mortgagor's "legal representative," within the meaning of that term in § 8, Bengal Reg. XVIII. of 1806, is entitled on foreclosure proceedings being taken by the conditional vendee to the notice required by that section, and cannot be deprived by the conditional vendee of the possession of the land, notwithstanding foreclosure, where such notice has not been given to him. DIRGAJ SINGH *v.* DEBI SINGH. *Stuart*, C.J., and *Turner*, J...**I. L. Rep. 1 All. 499, 1877.**

BENGAL REGULATION XX. OF 1812—§ 2, Cl. 5—Secondary Evidence

See **Mahomedan Law—Gift. 2.**

AMEEROONISSA *v.* ABEDOONISSA... **L. Rep. 2 I. A. 87; 15 Beng. L. R. 87; 23 W. R. 208.**

BENGAL REGULATION XIX. OF 1814.

See **Partition by the Revenue Authorities.**

SHARAT CHANDER *v.* HARGOBINDO. **I. L. Rep. 4 Cal. 510.**

Digitized by Google

BENGAL REGULATION VI. OF 1819—

§ 6. Disobedience of Order not to ply Boats near Public Ferry.

See **Disobedience of Order of Public Servant.**

MUTHRA *v.* JAWAHIR...**I. L. Rep. 1 All. 527.**

BENGAL REGULATION VIII. OF 1819

—§ 6—*Appeal—Stat. 24 & 25 Vict., Ch. 104, § 15.*] No appeal lies from a summary order of the District Judge, passed under § 6 of Bengal Regulation VIII. of 1819, directing the zemindar to accept the security tendered and give effect to the transfer without delay, though the Judge may have used the word 'decree,' and drawn up the order in the form of a decree directing that an injunction should issue.

Per Birch, J.—A party who has preferred an appeal to the High Court where the law gives him no appeal, is not entitled on the hearing to ask the Court to treat it as an application for the exercise of its extraordinary jurisdiction under § 15 of Stat. 24 and 25 Vict., Cl. 104. *In the matter of the Petition of* SOORJA KANT ACHRAJ CHOWDHRY. *Birch* and *Morris*, JJ...**I. L. Rep. 1 Cal. 383, 1876.**

—— §§ 8 and 11.

See **Putni Talook.**

BRINDABAN *v.* BRINDABAN...**L. Rep. 1 I. A. 178; 21 W. R. 324; 13 Beng. L. R. 408.**

—— § 8—*Service of Notice of Sale—Suit for Reversal of Sale.*] In a suit for the reversal of a patni sale under Beng. Reg. VIII. of 1819, it was proved that the notice of sale was first stuck up in the Cutcherry of the ijaradar (the Mehal having been let out in ijara by the patnidar), but the gomasta of the ijaradar having refused to grant a receipt of the service of the notice to the peon who took it, it was taken down and subsequently personally served upon the plaintiff, the patnidar, at his house, which was at some distance from the patni Mehal:—

Held, that the object of the provisions contained in § 8 of Beng. Reg. VIII. of 1819 relating to the service and publication of the notice of sale, is, not only to give notice of the sale to the defaulter, but also to under-tenants, and further to advertise the sale "on the spot" for the information of the intending purchasers; and although the forms prescribed for the publication of the notice had not been strictly complied with, yet the defects established by the plaintiff in the manner of the publication of the notice were not such as amounted to "a sufficient plea" within the meaning of § 14 of Beng. Reg. VIII. of 1819, for setting aside the sale. The plaintiff did not allege that in consequence of the defective publication of the notice there was not a sufficient gathering of intending purchasers at the time of sale; nor did he complain that his under-tenants were ignorant of the impending sale of the parent talook, and were therefore prevented from depositing the arrears of rent to stay the sale, nor was the Mehal sold below its value. GOUREE LALL SINGH *v.* JOODHISTEER HAJRAH. *Glover* and *Mitter*, JJ...**I. L. Rep. 1 Cal. 359, 1876.**

—— § 8, Cl. 2—*Substantial Persons—Service of Notice of Sale—Material Mistatement in Petition for Special Leave to appeal.*] In a suit to cancel a sale of a *putnee* tenure under Reg VIII. of 1819, on the ground that the witnesses who attested the due publication of notice were not "substantial persons" within the meaning of § 8, Cl. 2, of the Regulation: *Held* (reversing the decree of the High Court), that a "substantial" person does not necessarily mean a wealthy person from whom damages could be recovered by the putneedar, supposing the attestation to be false. Wealth is only one element in the position and *status* of the witness, and if he lives in the neighbourhood and if he be a respectable man of good character, on evidence appearing of such facts, of which the Judge in each case must satisfy himself, the Judge, in estimating the position of the man, may properly come to the conclusion that he is a substantial person. Where it is proved that the notice of sale has been actually served, the sale is not vitiated merely because one of the witnesses to the notice is held not to be substantial within the meaning of the clause.

Sona Bebee v. *Lallchand Chowdry* (9 W. Rep. 242) approved.

It appearing that the petition on which special leave to appeal had been granted contained a material misstatement of fact, their Lordships refused the costs of the appeal. There must be *uberrima fides* on the part of those who come for leave to appeal on special grounds, otherwise the order granting it will be rescinded on application

Digitized by Google

BENGAL REGULATION VIII. OF 1819—*contd.*

by the respondent at any time before the appeal has been actually entered upon at their Lordships' bar; but such objection ought to be taken by the respondent as early as the matter is brought to his notice, and it is wrong to leave the objection until the hearing of the appeal, when the record has been sent from India, and when all the costs attending the hearing have been incurred.

If such misstatement should appear, even at the latest stage, to have been made with the intention to deceive, the appeal will be dismissed. RAM SABUK BOSE *v.* MONMOHINI DOSSEE...**L. Rep. 2 I. A. 71; 14 Beng. L. R. 394; 23 W. R. 113, 1874.**

—— § 8, Cl. 2.—**2.** *Notice of Sale—Publication—Proof of Service.*] Although the provisions of § 8, Cl. 2, of Bengal Reg. VIII. of 1819, specifying the manner in which service of notice of sale should be proved or verified, are merely directory, it is, nevertheless, absolutely essential to the validity of a sale under that Regulation that the notice should be served in strict compliance with the directions given in the same clause and section of the Regulation.

Gouree Lall Singh v. *Joodhistir Hajrah* (25 W. Rep. 141) dissented from. BHAGWAN CHANDER DASS *v.* SUDDER ALLY...**I. L. Rep. 4 Cal. 41; 2 Cal. Rep. 357.**

—— § 8, Cl. 2.—**3.** *Putni Tenure—Sale of for Arrears of Rent—Date of Publication of Notice.*] In a suit to set aside a sale of a putni tenure for default in payment of rent, on the ground that the notification of sale was not published before the 15th Bysack, as required by Cl. 2 of § 8 of Bengal Regulation VIII. of 1819, it appeared that the receipt for the service of the notification bore date the 15th of Bysack, and was signed by four *munduls* of the village, in which the plaintiff's *mál* cutcherry was situated. The serving peons deposed that they had served the notification of sale on the holder of a four-annas share on the 13th or 14th Bysack, and, failing in the endeavours they made on that and the following day to serve the plaintiff, they sent for the *munduls* of the village, read the notice to them, and affixed it on the cutcherry, and obtained the receipt dated 15th Bysack. The sale took place seventeen days afterwards:—

Held, that the fact that the receipt of the notice of the sale was dated 15th Bysack, and

BENGAL REGULATION VIII. OF 1819—*contd.*

did not show that the "notice had been published at any time previous" to that date, was not a sufficient ground for setting aside the sale. Section 8, Cl. 2, of Bengal Regulation VIII. of 1819 provides that if it shall appear—*i.e.*, appear to the Collector—that the notice has been published at any time previous to the 15th Bysack, that shall be a sufficient warrant to proceed. The receipt in question bore the signatures of three substantial persons, which was to be accepted only in case of inability to procure the receipt of the defaulter. It might well be that the previous days had been spent in vain efforts to procure the signatures of the putnidar or his agents, and that the receipt was afterwards completed by the signatures of the *munduls* obtained on the 15th Bysack, and this might well have satisfied the Collector that the notice had in fact been published previous to the 15th Bysack. This being so, and no injury to the plaintiff being made out, and the sale having taken place two days after the time prescribed by the Regulation, even assuming the publication of the notice to have taken place on the 15th Bysack, the Court refused to set aside the sale.

It would be no "sufficient plea," within the meaning of § 14 of the Regulation, or substantial cause of complaint, that the receipt had been obtained, or the notification published on, instead of previous to the 15th Bysack. MATUNGEE CHURN MITTER *v.* MOORRARY MOHUN GHOSE. *Jackson* and *McDonnell*, JJ...**I. L. Rep. 1 Cal. 175, 1875.**

—— § 14—"Sufficient Plea."

See **§ 8; and § 8, Cl. 2. 2. 3.**

GOWREE LALL *v.* JOODHISTEER...**I. L. Rep. 1 Cal. 359.**

MATUNGEE *v.* MOORRARY.....**I. L. Rep. 1 Cal. 175.**

BENGAL REGULATION VII. OF 1822.

See **Jamabandi.**

TARU PATUR *v.* ABINASH CHUNDER DUTT...**I. L. Rep. 4 Cal. 79.**

BENGAL REGULATION VIII. OF 1822—§ 9, Cl. 1—Suit for Declaration of Zemindari Right to Cesses.

See **Declaratory Decree. 8.**

AKBAR KHAN *v.* SHEORATAN.....**I. L. Rep. 1 All. 373.**

Digitized by Google

BENGAL REGULATION XI. OF 1825.
—§§ 2 and 4, Cl. 1, 2.
See **Accretion.**
RUGHOOBUR *v.* MAHARAJAH KISHEN...**L. Rep. 6 I. A. 211.**

BEQUEST TO A CHARITY WHICH HAS CEASED TO EXIST—Residuary Bequest to Charity—Cy-près.
See **Will. 11.**
MAYOR OF LYONS *v.* ADVOCATE-GENERAL OF BENGAL...**L. Rep. 3 I. A. 32; I. L. Rep. 1 Cal. 303.**

BEQUEST TO A CLASS—Some of whom not in Existence at Testator's Death.
See **Hindu Law—Will. 4.**
KHERODEMONEY *v.* DOORGAMONEY. **I. L. Rep. 4 Cal. 455.**
See **Limitation. 38.**
TREEPOORASOONDERY *v.* DEBENDRONATH...**I. L. Rep. 2 Cal. 45, p. 53.**

—— Remoteness.
See **Hindu Law—Will. 7.**
SOUDAMONEY *v.* JOGESH CHUNDER...**I. L. Rep. 2 Cal. 262.**

—— Residuary—Postponement of Period of Distribution.
See **Will. 4. 5.**
MASEYK *v.* FERGUSSON. **I. L. Rep. 4 Cal. 304, 670.**

BETROTHAL—Specific Performance—Hindu Law.
See **Injunction. 1.**
GUNPUT...**I. L. Rep. 1 Cal. 74.**

BHAGDARI VILLAGE.
See **Narvadari Village.**
VERIBHAI *v.* RAGHUBHAI...**I. L. Rep. 1 Bom. 225.**

—— Attachment and Sale of Unrecognized Portion of a *Bhag*.
See **Bombay Act V. of 1862. 1. 2.**
RANCHODAS *v.* RANCHODAS...**I. L. Rep. 1 Bom. 581.**
ARDASIR *v.* MUSE ..... **Ibid. 601.**

—— Mortgage of Portion of a *Bhag* in.
See **Bombay Act V. of 1862. 1.**
RANCHODAS *v.* RANCHODAS...**I. L. Rep. 1 Bom. 581.**

BHAG-JOTE TENURE.
See **Right to sue. 9.**
HORRO NARRAIN *v.* SHOODHA KRISHTO...**I. L. Rep. 4 Cal. 890.**

BHAOLI RENT — Arrears of — Suit for Money Equivalent of.
See **Act XVIII. of 1873, § 93. 1.**
TAJUDDIN *v.* RAM PARSHAD...**I. L. Rep. 1 All. 217.**

—— Ejectment for Arrears of.
See **Beng. Act VIII. of 1869, §§ 21 and 52.**
KISHEN GOPAUL *v.* BARNES...**I. L. Rep. 2 Cal. 374.**

—— Enhancement of.
See **Enhancement of Rent. 4.**
HANUMAN PARSHAD *v.* KAULESAR PANDEY...**I. L. Rep. 1 All. 301.**

BIGAMY.
See **Attempt.**
REG. *v.* PETERSON... **I. L. Rep. 1 All. 316.**
See **Hindu Law—Inheritance—Illegitimate Son. 4. 5.**
RAHI *v.* GOVIND...**I. L. Rep. 1 Bom. 97.**
NARAYAN *v.* LAVING...**I. L. Rep. 2 Bom. 140.**

—— Abetment of.
See **Abetment. 2.**
EMPRESS *v.* ABDOOL KUREEM...**I. L. Rep. 4 Cal. 10.**

—— Teli Caste.
See **Penal Code, § 494.**
REG. *v.* SAMBHU...**I. L. Rep. 1 Bom. 347.**

BILL OF COSTS—Limitation.
See **Attorney and Client. 1.**
ABBA HAJI *v.* ABBA THARA.....**I. L. Rep. 1 Bom. 253.**
See **Limitation. 57.**
HEARN *v.* BAPU NAIKIN.....**I. L. Rep. 1 Bom. 505.**

—— Right to tax after Declining—Acquiescence.
See **Attorney and Client. 2.**
MONOHUR DOSS *v.* ROMONAUTH LAW...**I. L. Rep. 3 Cal. 473.**

Digitized by Google

BILL OF EXCHANGE.

—— Accommodation Acceptance — Receipt of consideration from Drawer.

See **Principal and Surety. 4.**

POGOSE *v.* BANK OF BENGAL...**I. L. Rep. 3 Cal. 174.**

—— Bankruptcy of Acceptor — Suit against Drawer and Acceptor residing within Jurisdiction of different Courts.

See **Procedure—Civil. 1.**

BASANT RAM *v.* KOLAHAL...**I. L. Rep. 1 All. 392.**

—— Drawn in Foreign Territory by British Subject neither Resident nor Domiciled therein in favour of Creditor resident in Foreign Territory — Jurisdiction of Foreign Court.

See **Jurisdiction. 7.**

MATHAPPA *v.* CHELLAPPA...**I. L. Rep. 1 Mad. 196.**

—— Power of Directors to bind Company by.

See **Power of Directors to bind Company by Bill of Exchange.**

THE NEW FLEMING S. & W. Co. (LIMITED)...**I. L. Rep. 3 Bom. 439.**

BILLS OF EXCHANGE ACT.

See **Act V. of 1866.**

BILL OF LADING—*Exception in—Loss by Fire.*] Under the terms of a bill of lading, "*goods were to be delivered from the ship's tackle as fast as the steamer could discharge, failing which the steamer's agents were to be at liberty to land the goods at their godown*"; the bill of lading further amongst other exceptions, provided that shipowners should "*not to be liable for loss by fire.*"

The steamer, on arriving at the port of discharge, came alongside the wharf, and commenced unloading at the Custom-house godowns without giving the consignees the option of landing the goods from the ship's tackle. The consignees, however, did not object to the goods being landed at the Custom-house godowns, and they also paid, without objection, a sum for wharfage of a part of the goods in the godowns. The goods while in the godowns were destroyed by fire, but, without any default on the part of the shipowners:—

Held, that either the placing the goods in the godowns was a part of the shipowners' duty under the contract of carriage, in which case they were protected under the exception in the bill of lading, providing against loss by fire, as much as if the fire had occurred on boardship; or when the goods were placed in the godown with the consent of the owners of the goods, the shipowners had charge of them as wharfinger (which was the view the Court was disposed to take of their true position); and in that case the goods having been destroyed by fire without any default on the part of the shipowners, the latter were not responsible. CHIN HONG & Co. *v.* SENG MOH & Co. *Garth*, C. J., and *Pontifex*, J....**I. L. Rep. 4 Cal. 736; 3 Cal. Rep. 585, 1879.**

BIRT TENURES—Purchase of—by Mortgagee—Right of Mortgagor to redeem.

See **Mortgage. 15.**

RAJAH KISHENDATT *v.* RAJAH MUMTAZ.....**L. Rep. 6 I. A. 145.**

BLINDNESS—To Exclude from Inheritance must be Congenital.

See **Hindu Law—Disqualification to Inherit. 1. 2.**

MURARJI *v.* PARVATIBAI.....**I. L. Rep. 1 Bom. 177.**

UMABAI *v.* BHAVU.....**Ibid. 557.**

BOMBAY ACT V. OF 1862.

See **Narvadari Village.**

VERIBHAI *v.* RAGHUBHAI.....**I. L. Rep. 1 Bom. 225.**

1. ——§§ 1 to 3—Bhagdari *Village—Mortgage before Passing of the Act—Court Sale.*] The plaintiff in 1874 sued on a *san* mortgage, dated 15th November 1861, *i.e.*, five months before the passing of Bombay Act V. of 1862, to recover a sum of money by sale of the mortgaged property, which formed part of a *bhag* in a *bhagdari* village, which *bhag* the defendant had purchased at a Court's sale subsequent to the date of the mortgage:—

Held, that, assuming § 1 of the Act to apply, it did not preclude the hearing of the suit, or the making of a decree, even though the Court might anticipate that the section would stand in the way of the execution of the decree, and that, therefore, the Court was bound to make a decree.

Digitized by Google

BOMBAY ACT V. OF 1862—*contd.*

But held also, that the section did not apply: as, 1st, retrospective operation was not to be given to it so as prejudicially to affect existing rights; and, 2ndly, the words "attachment or sale by the process of any Civil Court" in that section were intended to prevent attachment and sale under simple money decrees, and not to prevent the sale of mortgaged property in satisfaction of the mortgage debt.

Held, also, that the defendant, being a purchaser at an auction sale, bought only the right, title, and interest of the debtor, burdened with all valid liens created by him, and subject, therefore, to the plaintiff's *san* mortgage. RANCHODAS DAYALDAS *v.* RANCHODAS NANABHAI. *Melvill* and *Kemball*, JJ.....**I. L. Rep. 1 Bom. 581, 1877.**

2. —— § 3.—*Sale of Unrecognised Portion.*] The sale of a portion of a *bhag* in a *Bhagdari* or *Narvadari* village, other than a recognized subdivision of such *bhag*, or of a building-site appurtenant to it, is illegal, under § 3 of Bombay Act V. of 1862: and a judgment creditor cannot, in execution of his decree, evade the law, by describing his debtor's separate portion in the *bhag* as his "right, title, and interest in the whole *bhag*"; for, under § 213 of Act VIII. of 1859, the creditor is bound to specify the debtor's share or interest to the best of his belief, or so far as he has been able to ascertain the same.

Even if a sale of an undivided share in a *bhag* be lawful, the purchaser cannot insist on any particular portion of the *bhag*, as representing his debtor's portion, being delivered to him. All he can do is to sue for partition; but *quære* whether such partition could be made ARDASIR NASARVANJI *v.* MUSE NATHA. *Melvill* and *Kemball*, JJ... **I. L. Rep. 1 Bom. 601, 1877.**

BOMBAY ACT II. OF 1863—§ 6, Cl. 2—*Non-Recognition of adoption by Civil Court.*] The provision in Bombay Act II. of 1863, § 6, Cl. 2, as to the non-recognition of adoption by any Civil Court relates only to the question of the assessability of the lands when raised between Government and a claimant of exemption. It is not open to a party to rely upon a provision of which Government only is entitled to take advantage. VASADEV ANANT *v.* RAMKRISHNA NARRAYAN. *Westropp*, C. J., and *Melvill*, J...**I. L. Rep. 2 Bom. 529, 1878.**

BOMBAY COTTON FRAUDS' ACT IX. OF 1863—§ 2—*Possession of Adulterated Cotton—Knowledge.*] Possession of adulterated cotton, even though accompanied by a knowledge that the cotton was adulterated, is not sufficient to sustain a conviction, under § 2 of Bombay Act IX. of 1863, of fraudulent adulteration or deterioration of cotton. There is no criminality attaching to such possession until the cotton is offered for sale or compression. REG. *v.* HANMANT GAVDA. *Melvill* and *Kemball*, JJ...**I. L. Rep. 1 Bom. 228, 1876.**

BOMBAY ACT V. OF 1864—*Mamlatdar's Order under Bombay Act V. of 1864—Possession—Revenue Courts—Act XVI. of 1838, § 1, Cl. 2.*] A Mamlatdar's order under Act. V. of 1864 is not conclusive evidence of the facts of possession and dispossession between the parties. The power reserved to the Revenue Courts by § 1, Cl. 2, of Act XVI. of 1838, to determine the facts of possession and dispossession, was so reserved for the temporary purpose of enabling those Courts to dispose of the immediate possession, which was to continue only until the Civil Court ejected the party put into immediate possession.

Bombay Act V. of 1864, which gives to the Mamlatdar's Court jurisdiction in cases of dispossession, within six months from the date of such dispossession, also relates to immediate possession (§ 1), and provides that the party to whom such immediate possession is given by the Mamlatdar, or whose possession he shall maintain, shall continue in possession until ejected by a decree of a Civil Court (§ 15). The purpose of this Act, like that of Act XVI. of 1838, was temporary only, and chiefly to provide for the cultivation of the land and to prevent breaches of the peace until the Civil Court should determine the rights of the parties.

The decisions in the Revenue and Mamlatdars' Courts as to possession and dispossession are not binding on the Civil Courts in questions of title, which the Civil Courts alone can entertain. BASSAPPA MURTIAPPA *v.* LAKSHMAPPA MARITAMAPPA. *Westropp*, C. J., and *N. Harridas*, J.....**I. L. Rep. 1 Bom. 624, 1877.**

BOMBAY MINORS' ACT XX. OF 1864—Unauthorized Sale by Guardian of Minor—Lien.

See **Lien. 1.**

KUVARJI *v.* MOTI HARIDAS...**I. L. Rep. 3 Bom. 234.**

Digitized by Google

BOMBAY MINORS' ACT XX. OF 1864 —*contd.*

—— Undivided Hindu Family—Death of Member of—Certificate cannot be granted if no Separate Property.

See **Certificate of Administration of Minor's Estate. 1.**

GURACHARYA *v.* SVAMIRAYACHARYA. **I. L. Rep. 3 Bom. 431.**

——§ 2—*Procedure—Civil Procedure Code—Act X. of* 1877, § 440.] Where a Hindu widow sued as guardian of her minor sons without having obtained a certificate of administration, as required by § 2 of Act XX. of 1864:—

Held, that Act XX. of 1864 is not superseded by Act X. of 1877; and it appearing from the frame of the suit, that the widow claimed to have charge of the property in trust for her minor sons, it was necessary under § 2, Act XX. of 1864, if the whole estate was of greater value than Rs. 250, that she should hold a certificate of administration; but that it was competent to the Court, if there was any pressing necessity (owing to the operation of the law of limitation) that the suit should be brought at once, to accept the plaint and stay proceedings until the mother had obtained a certificate under Act XX. of 1864. *Vijkor* v. *Jijibhai* (9 Bom. H. C. Rep. 310) followed. MURLIDHAR *v.* SUPDU. *Melvill* and *Kemball*, JJ.....**I. L. Rep. 3 Bom. 149, 1879.**

—— §§ 11 and 15—*Suit against Collector—Act XIV. of* 1869, § 32—*Jurisdiction.*] Sections 11 and 15 of Act XX. of 1864, taken together, show that the Collector when appointed to take charge of the estate of a minor, is so in his capacity as Collector, and therefore, as an officer of Government within the meaning of § 32 of Act XIV. of 1869. NARSINGRAV RAMCHANDRA *v.* LUXIMANRAV. *Westropp*, C.J., and *Kemball*, J. **I. L. Rep. 1 Bom. 318, 1876.**

BOMBAY ACT I. OF 1865—Revenue Survey Registers—Entry of *Khot's* Tenants' Names as Occupants—Cause of Action.

See **Entry of Names of Khot's Tenants in the Revenue Survey Register as Occupants.**

D. R. BAM *v.* THE SURVEY COMMISSIONER OF RATNAGIRI...**I. L. Rep. 3 Bom. 134.**

—— § 2—Cl. *j*, *k*, *l*.

See **Kabulayatdar Khot.**

KRISHNAJI *v.* RAMCHANDRA...**I. L. Rep. 1 Bom. 70.**

BOMBAY ACT I. OF 1865—*contd.*

—— § 32—Village Cattle.

See **Right of Free Pasturage.**

COLLECTOR OF THANA *v.* BAL PATEL...**I. L. Rep. 2 Bom. 110.**

—— § 35—*Land in Salsette*—Ultra Vires—*Government Land—Building—Prescription.*] The plaintiff held a cocoanut oart in Bandora, in the island of Salsette, in the Thana District, under a title which extended back, at all events, to the year 1815. In the year 1869 he commenced to build and in 1871 completed the building of a bungalow upon it, without the permission of the Collector, who, under Nos. 4 and 8 of the Rules framed under § 35 of Bombay Act I. of 1865, and issued on the 1st November 1865, inflicted on the plaintiff a fine of thirty times the fixed assessment of the whole Survey number, and doubled that fine under the Supplementary Rules framed under Government Resolution No. 436, dated February 1st 1869; and on the plaintiff's failure to pay the fine, summarily attached his land under the provisions of § 48 of Bombay Act I. of 1865.

In a suit brought by the plaintiff to remove the attachment:—

Held, 1*st*, That it was not within the power of the Government of Bombay to make the rule of 1st February 1869, and no penalty having been prescribed by § 35 of the Act for building without the Collector's permission, and the Governor in Council not being authorized to make a rule on the subject, the attachment placed by the Collector was in pursuance of an unauthorized demand and illegal.

Held, 2*ndly*, That § 35 is in terms applicable only to occupants of Government land; and the Government land spoken of in that section is the same thing as "land belonging to Government" spoken of in § 11 of the Act, and must be understood as used in the same sense of contradistinction to land "belonging to private individuals." And the distinction between Government land and land belonging to individuals is not to be sought in the payment or non-payment of assessment, but has reference to the proprietary right in the soil. The expressions, "land belonging to Government," and "Government land," mean, land of which Government is the proprietor, and do not apply to land in which the proprietary right in the soil vests in a private individual, whether or not it be subject to the payment of assessment to Government.

Digitized by Google

BOMBAY ACT I. OF 1865—*contd.*

3rdly, That from § 40 of Reg. I. of 1808, it appeared that the occupants of oarts in the island of Salsette were, from 1800 to 1808 (the date of the Regulation) treated as "proprietors," and that in 1807 the assessment was fixed on the whole extent of the oarts, "however occupied." There was no reason to suppose that the assessment had been altered between 1808 and 1861, when the new Survey was introduced, but even if it had been altered, it would not have affected the plaintiff's claim, for the assessment on land may be varied, without any disturbance of proprietary rights; and the plaintiff, and those through whom he claimed, having held as proprietors and without dispute from 1815 till 1869, the plaintiff had acquired a prescriptive right of property, under Reg. V. of 1827, § 1, to the oart, subject only to the payment of assessment; that the land was not Government land within the meaning of § 35 of Bombay Act I. of 1865, and therefore that the plaintiff was not liable to pay any fine or penalty for building on it without the Collector's permission, and that the attachment of the oart by the Collector was illegal, and must be removed. THE COLLECTOR OF THANA *v.* DADABHAI BOMANJI. *Melvill* and *Kemball*, JJ..... **I. L. Rep. 1 Bom. 353.**

—— 48.

See **Kabulayatdar Khot.**

KRISHNAJI *v.* RAMCHANDRA...**I. L. Rep. 1 Bom. 70.**

See **§ 35.**

COLLECTOR OF THANA *v.* DADABHAI...**I. L. Rep. 1 Bom. 353.**

BOMBAY CIVIL COURTS' ACT XIV. OF 1869—§ 24.

See **Jurisdiction. 19. 20.**

BAI MAKHOR *v.* BULAKHI...**I. L. Rep. 1 Bom. 538.**

KALU *v.* VISRAM.....**Ibid. 543.**

—— § 32.

See **Bombay Minors' Act XX. of 1864, §§ 11 and 15.**

NARSINGRAV *v.* LUXUMAN...**I. L. Rep. 1 Bom. 318.**

See **Jurisdiction. 18.**

GANGADHAR *v.* COLLECTOR OF AHMEDNAGAR...**I. L. Rep. 1 Bom. 628.**

BOMBAY ACT VI. OF 1873—§ 5—*Suit against Municipal Commissioner.*] "Whether a suit (against Municipal Commissioners for acts done by them as such) must be commenced, under Bombay Act VI. of 1873, in the District Court, we do not now give any opinion. It may, perhaps, be argued that § 5 of that Act merges the individuality of the members of the new Municipalities in the Corporations thereby created, and empowered to sue and be sued in its corporate name." *Per Westropp*, C. J. GANGADHAR SHIVKAR *v.* COLLECTOR OF AHMEDNAGAR.....**I. L. Rep. 1 Bom. 628.**

—— § 7— Jurisdiction—Subordinate Judge.

See **Suit against a Municipality.**

THE AHMEDABAD MUNICIPALITY *v.* MAHAMAD JAMAL...**I. L. Rep. 3 Bom. 146.**

—— §§ 36 to 39—Cl. 1, § 74. Non-compliance with notices issued by the Municipality under § 36 of Cl. 1 of § 39 of Bombay Act VI. of 1873 is not an offence punishable under that Act, as Cl. 1 of § 74 of that Act does not apply to either of those provisions. The latter clause applies only to the second clause of § 39. *In re* TUKARAM VITHAL. *Westropp*, C. J., and *Kemball*, J.....**I. L. Rep. 2 Bom. 527, 1878.**

BOMBAY ACT III. OF 1874.

See **Declaratory Decree. 17. 18.**

CHINTO *v.* LAKSHMIBAI.....**I. L. Rep. 2 Bom. 375.**

KHANDO *v.* APAJI...**I. L. Rep. 2 Bom. 370.**

BOMBAY ACT X. OF 1876—§ 15—Municipalities.

See **Suit against a Municipality.**

THE AHMEDABAD MUNICIPALITY *v.* MAHAMAD JAMAL...**I. L. Rep. 3 Bom. 146.**

BOMBAY COTTON FRAUDS' ACT VII. OF 1878—§§ 6 and 14—*Adulteration in Foreign Territory — Possession — Jurisdiction.*] Cotton supposed to have been adulterated in foreign territory was seized in British territory:—

Held, that the Magistrate of the place where the cotton was seized has jurisdiction to try the person in possession of the cotton, as the effect of §§ 6 and 14 of Bombay Act VII. of 1878 is to make the possession of "adulterated cotton lia-

Digitized by Google

BOMBAY COTTON FRAUDS' ACT VII. OF 1878—*contd.*

ble to confiscation" punishable with fine, and it is immaterial where the adulteration takes place. IMPERATRIX *v.* KHIMCHAND NARRAYAN. *Kemball* and *F. D. Melvill*, JJ...**I. L. Rep. 3 Bom. 384, 1879.**

BOMBAY REGULATION I. OF 1808.

See **Bombay Act I. of 1865, § 35.**

COLLECTOR OF THANA *v.* DADABHAI BOMANJI...**I. L. Rep. 1 Bom. 352.**

BOMBAY REG. II. OF 1827—§ 21—Caste Question—Office of *Chalwadi*.

See **Disturbance of Office. 1.**

SHANKARA *v.* HANMA.....**I. L. Rep. 2 Bom. 470.**

BOMBAY REGULATION V. OF 1827—§ 1, Cl. 1.

See **Bombay Act I. of 1865, § 35.**

COLLECTOR OF THANA *v.* DADABHAI BOMANJI...**I. L. Rep. 1 Bom. 352.**

BOMBAY REGULATION XVII. OF 1827—§ 3, Cl. 1, and § 5.

See **Kabulayatdar Khot.**

KRISHNA *v.* RAMCHANDRA ...**I. L. Rep. 1 Bom. 70.**

BOMBAY REGULATION XXVI. OF 1827—Appointment of Kazi.

See **Kazi. 1. 2.**

JAMAL AHMED *v.* JAMAL JALLAL... **I. L. Rep. 1 Bom. 633.**

DAUDSHA *v.* ISMAILSHA.....**I. L. Rep. 3 Bom. 72.**

BONA FIDES.

See the cases under **Act XVIII. of 1850.**

—— Of Purchaser with Notice of Trust.

See **Hindu Law—Will. 10.**

MANIKLAL *v.* MANCHERSHA...**I. L. Rep. 1 Bom. 269.**

BONA FIDE CLAIM OF RIGHT.

See **Criminal Trespass. 4. 5.**

EMPRESS *v.* BUDHSINGH...**I. L. Rep. 2 All. 101.**

GOVIND PRASAD.....**I. L. Rep. 2 All. 465.**

BONA FIDE PURCHASER—Of *Dewutter* Property.

See **Dewutter. 2.**

KONWUR DOORGANATH *v.* RAM CHUNDER...**L. Rep. 4 I. A. 53; I. L. Rep. 2 Cal. 341.**

BONA FIDE PURCHASER FOR VALUE WITHOUT NOTICE OF WIDOW'S CLAIM FOR MAINTENANCE.

See **Hindu Law—Maintenance of Widow. 1. 13.**

ADHIRANEE *v.* SHONA MALU...**I. L. Rep. 1 Cal. 365.**

LAKSHMAN *v.* SATYABHAMABAI ..**I. L. Rep. 2 Bom. 494.**

BOND—Attachment of.

See **Civil Procedure Code, Act X. of 1877, § 268.**

NURSINGDAS *v.* TULSIRAM...**I. L. Rep. 2 Bom. 558.**

—— Cancellation of—Suit for.

See **Bengal Civil Courts' Act VI. of 1871, § 22.**

KALI CHARAN RAI *v.* AJUDHIA RAI...**I. L. Rep. 2 All. 148.**

—— Interest on—After due date of Bond containing Agreement to pay Interest up to due Date.

See **Interest. 1. 3. 6.**

DEEN DOYAL *v.* HET NARAIN .. **I. L. Rep. 2 Cal. 41.**

BALDEO *v.* GOKAL.....**I. L. Rep. 1 All. 603.**

NANCHAND *v.* BAPUSAHEB...**I. L. Rep. 3 Bom. 131.**

—— Lien on.

See **Mortgage. 30.**

HASSON ARRA *v.* JAWADOONISSA. **I. L. Rep. 4 Cal. 29.**

BOND CHARGING IMMOVEABLE PROPERTY—Suit on—Decree payable by Instalments.

See **Civil Procedure Code, Act X. of 1877, § 210.**

HURDEO DAS *v.* HUKAM SINGH... **I. L. Rep. 2 All. 320.**

BOND PAYABLE BY INSTALMENTS.

See **Limitation. 24.**

BALL *v.* STOWELL...**I. L. Rep. 2. All. 342.**

Digitized by Google

BOND PAYABLE BY INSTALMENTS —*contd.*

—— Whole to fall due on any Default—Limitation.

See **Limitation. 30.**

GUMMA *v.* BHIKU...**I. L. Rep. 1 Bom. 125.**

BOND FOR PERFORMANCE OF DUTIES OF OFFICE.

See **Principal and Surety. 1.**

CROSTHWAITE *v.* HAMILTON.....**I. L. Rep. 1 All. 87.**

BOND TO SECURE BALANCE OF ACCOUNT—*Error in Accounts — Estoppel — Endorsement—Receipt.*] The defendant executed to the plaintiff a bond for the payment of the balance found due from the defendant to the plaintiff, on an adjustment of the account of their mutual dealing, which bond contained the following stipulation :— "I shall pay the money after causing the payment to be entered on the back of this bond, or after taking a receipt for the same. I shall not lay claim to any payment except in this way."

In a suit by the plaintiff upon this bond, the defendant, while admitting its execution, said that the balance secured by the bond was incorrect, owing to errors in the account, and that at the time of the adjustment, and ever since, he had disputed the accuracy of the balance. He also alleged that he had made various payments in respect of the balance, which were not endorsed on the bond, and for which he held no receipts.

Held, that the defendant could not be permitted to re-open the question of the correctness of the balance for which the bond was given, as he must be taken to have waived his objection, since, notwithstanding it, he subsequently executed the bond and made payments on it. The case would have been different if his allegation had been that *after* the execution of the bond he had discovered errors in the account on which the balance was arrived at. In such a case it might possibly have been right, on specification of some one or more of the alleged errors, to have allowed him to re-open the question of the correctness of the account.

Held, also, that the stipulation in the bond could not be permitted to control Courts of Justice as to the evidence — which, keeping within the rules of the general law of evidence, they may admit—of payment. There is nothing in that law which would warrant the Court in excluding direct oral evidence of payment. The absence of endorsement, in the case of a bond containing such a stipulation as in the bond sued on, is a circumstance of some importance, and ought not to be overlooked, but it is by no means conclusive, and ought not to be so regarded. NARAYEN UNDIR PATIL *v.* MOTILAL RAMDAS. *Westropp*, C.J., and *Kemball*, J...**I. L. Rep. 1 Bom. 45, 1875.**

BOND TO SECURE BALANCE OF ACCOUNT—*contd.*

BOND SPECIALLY REGISTERED— Appeal from Order in Execution of Decree on.

See **Appeal—Civil. 7. 11. 12.**

BHYRUB CHUNDER *v.* GOLAB COOMARY ..... **I. L. Rep. 3 Cal. 517.**

RAMANAND *v.* BANK OF BOMBAY ... **I. L. Rep. 1 All. 377.**

WILAYAT-UN-NISSA *v.* WAJIB-UN-NISSA .....**Ibid. 583.**

—— Decree on—Mortgage.

See **Sale in Execution of Decree. 5.**

AKHE RAM *v.* NAND KISHORE... **I. L. Rep. 1 All. 236.**

—— Limitation for Execution of Decree on.

See **Appeal—Civil. 12.**

WILAYAT-UN-NISSA *v.* WAJIB-UN-NISSA...**I. L. Rep. 1 All. 583.**

See **Limitation. 79.**

JAI SHANKER *v.* TETLEY.....**I. L. Rep. 1 All. 586.**

BONUS—Refund of.

See **Darpatni.**

TARACHAND *v.* RAMGOBIND...**I. L. Rep. 4 Cal. 778.**

BOUNDARIES, SPECIFICATION OF, IN PLAINT.

See **Civil Procedure Code, Act VIII. of 1859, § 26.**

RAMDAYAL *v.* AJOODHIA.....**I. L. Rep. 2 Cal. 1.**

BREACH OF CONTRACT TO DELIVER—Jurisdiction—Whole Cause of Action arises at Place of Contract or Performance.

See **Jurisdiction. 14.**

MUHAMMAD ABDUL KADAR *v.* G. I. P. RY. CO...**I. L. Rep. 1 Mad. 375.**

Digitized by Google

BREACH OF CONTRACT TO PURCHASE GOODS — Measure of Damages.

See **Damages. 3.**

COHEN *v.* CASSIM NANA.....**I. L. Rep. 1 Cal. 264.**

BREACH OF CONTRACT TO SUPPLY LABOUR.

See **Act XIII. of 1859.**

ROWSON *v.* HANAMA MESTRI..**I. L. Rep. 1 Mad. 280.**

BREACH OF TRUST—Criminal.

See the cases under **Criminal Breach of Trust.**

—— *Alienation of Charity Property.*] There is no such principle of law that the alienation of charity property by the trustees is, standing by itself, a breach of trust. The Court of Chancery in many cases authorizes such alienations, and that which the Court might have done, on its own consideration of what would have been beneficial to the charity, may be done by the trustees on their own authority in the exercise of their legal powers.

And where a house had been devised by a testator in 1802, to his widow for life, in trust, to allow any Maharaja of the Vallabhacharya sect to live in it, and it appeared that no Maharaja ever had lived or was likely to live in it, and the house was in a decayed and dilapidated condition, and the widow therefore sold the house to a *bonâ fide* purchaser for value :—*Green*, J., said, had it been necessary to decide the question, that he would have upheld the sale by the widow, as being a reasonable and proper exercise of her office as trustee, and to have held it not to have been a breach of trust at all. MANIKLALL ATMARAM *v.* MANCHERSHA DINSHAW COACHMAN.....**I. L. Rep. 1 Bom. 269, 1876.**

S. C. under **Hindu Law—Will. 10.**

BREACH OF WARRANTY OF QUALITY—Right to rescind Contract.

See **Sale of Goods. 1.**

SHOSHI MOHUN *v.* NOBO KRISHTO. **I. L. Rep. 4 Cal. 801.**

BREAKING OPEN DOORS.

See **Housebreaking.**

JOTHARAM DAVAY...**I. L. Rep. 2 Mad. 30.**

BREAKING OPEN DOORS—*contd.*

—— *Execution of Decree—Shop Door—Act X. of 1877, § 271.*] A bailiff or *Nasir* has authority to break open the door of a shop in order to execute a writ of attachment, the previously existing law on the subject not being altered by § 271 of the new Civil Procedure Code (Act X. of 1877). DAMODER PARSOTAM *v.* ISHVAR JETHA. *Melvill* and *West*, JJ.....**I. L. Rep. 3 Bom. 89, 1878.**

BRIBE—Acceptance of—by Public Servant.

See **Penal Code, § 21, Cl. 9.**

MUDAN MOHUN...**I. L. Rep. 4 Cal. 376.**

See **Penal Code, § 165.**

EMPRESS *v.* KAMPTA PRASAD...**I. L. Rep. 1 All. 530.**

—— Attempt to obtain.

See **Attempt. 2.**

EMPRESS *v.* BALDEV SAHAI...**1. L. Rep. 2 All. 253.**

BRITISH CONSUL AT ZANZIBAR—Jurisdiction of.

See **Zanzibar.**

WAGJI KORJI *v.* THARIA TOPAN... **I. L. Rep. 3 Bom. 58.**

BROTHERS—Succession of—in Undivided Family—Nephews not excluded by.

See **Hindu Law—Inheritance—Nephew.**

BHIMUL DOSS *v.* CHOONEE LALL. **I. L. Rep. 2 Cal. 379.**

See **Hindu Law—Inheritance—Brothers. 3.**

DEBI PERSAD *v.* THAKUR DIAL... **I. L. Rep. 1 All. 105.**

—— Of Whole Blood succeed, in Bengal, in Preference to—of Half-Blood, to Immoveable Property.

See **Hindu Law — Inheritance — Brothers. 1. 2.**

RAJKISHORE *v.* GOBIND.....**I. L. Rep. 1 Cal. 27; 24 W. R. 234; L. Rep. 4 I. A. 153, n.**

SHEO SOONDARY *v.* PIRTHEE SING. **L. Rep. 4 I. A. 147.**

Digitized by Google

BROTHER'S DAUGHTER'S SON—Right of—to inherit.

See **Certificate to collect Debts. 1.**

OODOYCHURN...**I. L. Rep. 4 Cal. 411.**

See **Hindu Law — Inheritance—Brother's Daughter's Son.**

JUGGUT NARAIN *v.* THE COLLECTOR OF MANBHOOM...**I. L. Rep. 4 Cal. 413, n.**

BROTHERHOOD—Acknowledgment of—

See **Mahomedan Law — Acknowledgment of Brotherhood.**

MIRZA HIMMUT BAHADOOR *v.* MUSSAMUT SAHEBZADEE BEGUM.....**L. Rep. 1 I. A. 23.**

BUILDINGS—Erected by Occupancy Ryot.

See **Bengal Act VIII. of 1869.**

LAL SAHOO *v.* DEO NARAIN SINGH. **I. L. Rep. 3 Cal. 781.**

—— Erection of—by Tenant at Will or from Year to Year, on Land demised.

See **Landlord and Tenant. 2.**

PROSUNNO COOMARE *v.* SHEIKH RUTTON...**I. L. Rep. 3 Cal. 696.**

BUILDING ERECTED IN A PUBLIC THOROUGHFARE—Suit to remove.

See **Right to sue. 2. 3. 4. 5.**

GEHANJI *v.* GANPATI...**I. L. Rep. 2 Bom. 469.**

KARIM BAKSH *v.* BUDHA...**I. L. Rep. 1 All. 249.**

FAZIL HAQ *v.* MAHA CHAND..... **Ibid. 557.**

RAJ KOOMAR SINGH *v.* SAHEBZADA ROY...**I. L. Rep. 3 Cal. 20.**

BUNDS—Maintenance of.

See **Maintenance of Bunds.**

RAM LALL *v.* LILL DHARY...**I. L. Rep. 3 Cal. 776.**

BURMAH COURTS' ACT XVII. of 1875, §§ 31 and 66.

See **Jurisdiction. 9.**

In re ABDOOL HAMED...**I. L. Rep. 4 Cal. 94.**

—— **§ 35**—"Any Original Jurisdiction"—Transfer by Judicial Commissioner, from Sessions to his own Court, of Criminal Case—Appeal.

See **Jurisdiction. 17.**

EMPRESS *v.* TSIT OOE.....**I. L. Rep. 4 Cal. 667.**

BUTWARA.

See **Mortgage. 9.**

BYJNATH *v.* RAMOODEEN...**L. Rep. 1 I. A. 106 ; 21 W. Rep. 233.**

See **Partition by the Revenue Authorities.**

SHARAT CHANDER *v.* HURGOBINDO...**I. L. Rep. 4 Cal. 510.**

—— Possession given by Ameen n—Effect of.

See **Criminal Procedure Code, Act X. of 1872, § 530. 2.**

MACKENZIE *v.* SHERE BAHADOOR SAHI.....**I. L. Rep. 4 Cal. 378.**

—— *Effect of—Jurisdiction of Civil Courts.*] By a *butwara* the rights of under-tenure holders are in no way affected, and though, as between shareholders, the assignment of specific lands to each shareholder has binding effect, yet such assignment does not of itself entitle the shareholder to obtain *khas* possession to the deprivation of the rights of the tenants on the land.

The Civil Courts have no jurisdiction to disturb a *butwara* which has been effected by the properly constituted authorities acting in accordance with the law. *Per Kemp*, J. BEMOLASOODURY CHOWDHRAIN *v.* PUNCHANUN CHOWDHRY...**I. L. Rep. 3 Cal. 705, 707, 708, 1878.**

S. C. under **Res Judicata. 22.**

CALCULATION OF PERIOD OF LIMITATION.

See the heading **Computation of Period of Limitation.**

CANCELLATION OR REPUDIATION OF ADOPTION BY ADOPTIVE FATHER.

See **Hindu Law—Adoption. 18.**

CANCELLATION OF A BOND, SUIT FOR—Value of Subject-matter in Dispute—Appeal—Jurisdiction of District Judge.

See **Bengal Civil Courts' Act VI. of 1871, § 22.**

KALI CHARAN RAI *v.* AJUDHIA RAI. **I. L. Rep. 2 All. 148.**

CANCELLATION OF DOCUMENT—Suit for.

See **Declaratory Decree. 12.**

SHIB LAL *v.* HIRA LAL ..... **I. L. Rep. 1 All. 622.**

Digitized by Google

CANCELLATION OF SIGNATURE — *Deed—Release—Composition Deed—Misrepresentation—Negligence—Contract Act* (*IX. of* 1872), §§ 13, 18, 19.] The firm of Nicol & Co. having suspended payment, a general meeting of the creditors of the firm was convened, at which it was unanimously resolved that the business of the firm should be wound up by voluntary liquidation under the supervision of a Committee; and that the winding up should be conducted by two trustees under the supervision and control of the said Committee. At a subsequent meeting of the creditors it was resolved that the resolutions passed at the previous meeting should be confirmed, and it was also unanimously resolved that "a composition deed should be prepared in pursuance of the terms of the above resolution." The adoption of this last resolution was strongly urged upon the meeting by the solicitor for the insolvent firm. He entirely repudiated the idea that the members of the firm were to get any benefit from the deed, the object of which, he assured the meeting, was entirely for the benefit of the creditors, and insisted that the mode of procedure proposed in the resolution was proposed solely in the interest of the creditors. Neither before nor at either of these meetings was any mention made of any release to be given to the parties.

The plaintiffs were creditors of Nicol and Co., and *R.*, *S.*, and *B.* were their respective agents in Bombay. *R.*, *S.*, and *B.* attended the meetings on the plaintiffs' behalf, and were appointed members of the Committee of Supervision and Control. A few days after the last-mentioned Meeting, *M.*, one of the partners of the insolvent firm, called upon *R.*, who was at the time deeply engaged in pressing an important business. *M.* produced a deed which had been prepared by the solicitors of the firm, and which contained a clause by which the creditors, in consideration of the assignment of the estate to trustees, released and discharged the members of the firm from all claims. *M.* was aware of the existence of the release in the deed, but *R.* was not. *M.* asked *R.* to execute the deed, saying it was "the trust deed." *R.* requested *M.* to leave the document, saying he would peruse and return it in the course of the day; but *M.* earnestly pressed him to execute the document at once, stating that it was of the utmost importance that no time should be lost, as the native creditors were coming to his office, and it was necessary that all the members of the Committee of Supervision should sign first. *R.* objected to sign the document without reading it, and *M.* thereupon led him to suppose that it carried out only the terms agreed to at the creditors' meeting. On the faith of that assurance, *R.* executed the deed without reading it, on behalf of the first plaintiff, in the belief that it was nothing more than an assignment to trustees for the benefit of creditors. Subsequently, on the same day, *M.* took the deed to *S.*, and asked him to sign. *S.* was also engaged in pressing business, and asked *M.* to leave the deedfor perusal; but *M.* gave the same reason for not doing so that he had given to *R.*, and further stated that *R.* had signed, though he did not mention that *R.* had so signed without reading the deed, and that he (*M.*) hoped that *S.* would sign also. *S.* glanced at the deed, and being assured by *M.* that it was in order, thereupon, on the faith of that assurance, and believing that the deed was nothing more than an assignment of the estate to the trustees, executed the deed on behalf of the second plaintiffs without reading it. *M.* subsequently on the same day took the deed, with the signatures of *R.* and *S.* attached thereto, to *B.*, who was also engaged in pressing business, and asked him to sign it. After some conversation *B.* said to *M.*: "The deed, then, is merely an assignment of the firm's effects for the creditors?" and *M.* replied in the affirmative. *B.* then, on behalf of the third plaintiffs, executed the deed without reading it, believing it to be merely an assignment of the estate to the trustees.

CANCELLATION OF SIGNATURE— *contd.*

On the 15th October, *R.* and *B.* heard that the deed contained a release by the creditors to the debtors, and on the 16th October, *S.* was also for the first time informed of it. On the 16th of October, *R.* and *S.* wrote a letter to *M.*, repudiating their signatures, and refusing to be bound by the deed; and on the 26th of October, *B.* caused a similar letter to be written to *M.*'s solicitor. The plaintiffs sued to have the signatures of their respective agents and managers cancelled, and to have it declared that the deed was not binding on the plaintiffs:—

Held, that the introduction into the deed of an immediate release from the creditors essentially altered the nature of the arrangement contemplated by the above resolution, or intended to be acceded to by the creditors. The question as to the release, by the creditors

Digitized by Google

CANCELLATION OF SIGNATURE— *contd.*

of the firm, was never brought to their notice in any shape whatever, was never presented to their minds for consideration, and the deed contemplated by the above resolutions could not, with any reasonable regard to what took place at the meetings, have been intended by the creditors to contain an immediate release. The deed, therefore, containing as it did an immediate release by the creditors of their claims in consideration of the assignment of the property of the firm, could not, when read by the light of what occurred at the meeting of creditors, be regarded as a deed made in pursuance of the resolutions passed at those meetings, but was, in its present form, an essentially different deed from that which *R.*, *B.*, and *S.* intended to execute, or thought they were executing when affixing their signatures, and that having been induced to sign the deed without reading it by *M.*'s earnest entreaties to them to sign at once, and by his leading them to suppose that the deed only carried out the resolution of the creditors, and by his silence as to the release, their signatures must, so far as the deed operated as a release, be treated as nullities, and the deed, to that extent, be declared void as against the plaintiffs.

Held also, that though when *M.* entered *R.'s* room to ask him to sign the deed, he was under no obligation, legally or morally, to communicate the contents of the deed; the circumstances were quite changed by what took place between *M.* and *R.* When *R.*, on being pressed by *M.* to sign the deed without further delay, asked *M.* (as *M.* himself admitted) "whether it was all right," or (according to *R.*'s account) "whether it carried out the resolutions passed at the meeting," *M.* accepted the confidence placed in him by *R.* by answering the question and purporting to tell *R.* the nature of the deed. It thus became *M.*'s duty to state fully, without concealment, all that was essential to a knowledge of the contents of the document, and to have communicated the existence of the release, and *M.* not having done so, and *R.* having been thus led to execute a release to the prejudice of his bank, *M.* had committed a breach of duty such as is contemplated by § 18, Cl. 2 of the Contract Act IX. of 1872. There was no material difference in the circumstances connected with *S.* and *B.* *Held* also, that under the circumstances *R.*, *S.*, and *B.* had not the means of discovering the truth

CANCELLATION OF SIGNATURE— *contd.*

with ordinary diligence, and that the exception to § 19 of the Contract Act was not applicable. THE ORIENTAL BANK CORPORATION *v.* JOHN FLEMING. *Sargent*, J...**I. L. Rep. 3 Bom. 242, 1879.**

S. C. under **Parties to Suit. 2.**

CAPACITY OF MARRIED WOMAN TO CONTRACT.

See **Hindu Law—Capacity of Married Woman to contract.**

NATHULAL *v.* JAVHER.....**I. L. Rep. 1 Bom. 121.**

See **Married Woman's Property Act III. of 1874.**

ALUMUDDY *v.* BRAHAM.....**I. L. Rep. 4 Cal. 140.**

See **Married Woman's Separate Property. 2. 3.**

HURST *v.* MUSSOORIE BANK.....**I. L. Rep. 1 All. 762.**

BERESFORD *v.* HURST...**Ibid. 772.**

CARGO—Contract for Sale of.

See **Contract. 1.**

FORBES *v.* TULLOCKCHAND...**I. L. Rep. 3 Bom. 386.**

CARRIER—Burden of Proof of Negligence—Loss by Fire.

See **Railway Company. 3.**

ISHWARDSASS *v.* THE G. I. P. RY. CO...**I. L. Rep. 3 Bom. 120.**

—— Liability of—for Loss by Robbery.

See **Railway Company. 2.**

KUVERJI *v.* THE G. I. P. RY. CO. **I. L. Rep. 3 Bom. 109.**

—— Misdescription of Goods.

See **Railway Company. 3.**

ISHWARDASS *v.* THE G. I. P. RY. CO...**I. L. Rep. 3 Bom. 120.**

CASE CERTIFIED BY ADVOCATE GENERAL—Power of High Court on —to consider the Merits.

See **Evidence. 13.**

REG. *v.* HURRIBOLE CHUNDER GHOSE...**I. L. Rep. 1 Cal. 207.**

Digitized by Google

CASE CERTIFIED BY ADVOCATE-GENERAL—*contd.*

See **Power of the High Court on a Case Reserved or Certified to consider the Merits of the Case.**

REG. *v.* PITAMBER JINA.....**I. L. Rep. 2 Bom. 61.**

CASE STRUCK OFF FOR DEFAULT IN APPEARANCE — Power of Small Cause Court to restore.

See **Small Cause Court—Presidency Town. 1.**

SIB CHUNDER *v.* KISSEN DYAL...**I. L. Rep. 1 Cal. 476.**

CASHING STOLEN CURRENCY NOTE.

See **Government Currency Note.**

EMPRESS *v.* JOGESSUR MOCHI...**I. L. Rep. 3 Cal. 379.**

CASTE—Authority of—to declare a Marriage void.

See **Penal Code, § 494.**

REG. *v.* SAMBHU...**I. L. Rep. 1 Bom. 347.**

—— Custom of—for a Married Woman to contract a Second Marriage in the Life-time of her First Husband and without his Consent.

See **Penal Code, § 494.**

REG. *v.* SAMBHU.....**I. L. Rep. 1 Bom. 347.**

See **Custom. 5.**

NARAYAN *v.* BHASTI...**I. L. Rep. 2 Bom. 140.**

CASTE QUESTION — Right to perform Duties of *Chalvadi.*

See **Disturbance of Office. 1.**

SHANKARA *v.* HAMNA...**I. L. Rep. 2 Bom. 470.**

CAUSE OF ACTION.

See the cases under **Limitation.**

See the cases under **Right to sue,** and **Suit.**

See **Right to Fish in the Sea.**

BABAN *v.* NAGU.....**I. L. Rep. 2 Bom. 19.**

See **Suit for Land. 3.**

KELLIE *v.* FRASER...**I. L. Rep. 2 Cal. 445.**

CAUSE OF ACTION—*contd.*

—— Accruing during Minority.

See **Alienation by Guardian. 1.**

PROSONNA NATH *v.* AFZOLONESSA BEGUM...**I. L. Rep. 4 Cal. 523.**

—— Act VIII. of 1859, § 2—Substance not Form of Action to be regarded.

See **Res Judicata. 9.**

KRISHNA *v.* BOOJESWARI...**L. Rep. 2 I. A. 283; I. L. Rep. 1 Cal. 144.**

—— Barred by Act XIV. of 1859, not revived by its repeal.

See **Limitation. 15. 16. 17.**

NOCOOR CHUNDER *v.* KALLY COMAR...**I. L. Rep. 1 Cal. 328.**

ABDUL KARIM *v.* MANJI HANSRAJ.....**I. L. Rep. 1 Bom. 295, 305.**

RAMCHANDRA *v.* SOMAR...**I. L. Rep. 1 Bom. 305, n.**

RAM CHANDRA *v.* JUGGUTMONMOHINEY...**I. L. Rep. 4 Cal. 288.**

See **Hindu Law—Maintenance of Widow. 6.**

KHRISHNA MOHUN *v.* OKHILMONEE...**I. L. Rep. 3 Cal. 331.**

—— Disclosed in Plaint.

See **Plaint.**

BISHESWARI *v.* GOVIND PERSAD...**L. Rep. 3 I. A. 194.**

—— Dower.

See **Mahomedan Law—Dower. 1.**

RANEE KHAJOOROONISSA *v.* RANEE RYEESOONISSA.....**L. Rep. 2 I. A. 235.**

—— Goods obtained in Calcutta by Fraud—Pledge of the Goods to Defendant out of Calcutta—Leave to sue—High Court has Jurisdiction.

See **Jurisdiction. 12.**

KARTIK CHURN SETTY *v.* GOPALKRISTO PAULIT...**I. L. Rep. 3 Cal. 264.**

—— Heard and Determined.

See the cases under **Res Judicata.**

Digitized by Google

CAUSE OF ACTION—*contd.*

—— Second Mortgagee dispossessed by first Mortgagee—Subsequent Satisfaction of the latter and Re-entry by Mortgagor—Suit by Second Mortgagee.

See **Dispossession of Second by First Mortgagee.**

NARAINSINGH *v.* SHIMBHOOSINGH. **L. Rep. 4 I. A. 15.**

—— Service *Watan* held on Tenure of Successive Life Estates—Alienation of Service Land by Life Tenant—Suit to recover.

See **Service Watan.**

BABAJI *v.* NANA...**I. L. Rep. 1 Bom. 535, 536.**

—— Suit for Contribution.

See **Limitation. 60.**

FUCKORADDEEN MAHOMED *v.* MOHIMA CHUNDER...**I. L. Rep. 4 Cal. 529.**

—— Right to Turn of Worship of Idol.

See **Right to sue. 6.**

DEBENDRONATH *v.* ODIT CHURN. **I. L. Rep. 3 Cal. 390.**

CAUSE OF ACTION ARISING WHOLLY IN BOMBAY—*Hundi* drawn, indorsed and delivered at Ajmir, accepted and dishonoured in Bombay.

See **Letters Patent (Bombay) 1865, Cl. 12.**

SUGANCHAND *v.* MULCHAND.....**9 Bom. H. C. Rep. 270; 12 Ibid 113**; and **I. L. Rep. 1 Bom. 23.**

CAUSE OF ACTION—SPLITTING OF.

See the cases under **Civil Procedure Code, Act VIII. of 1859, § 7.**

—— Omission to Seek Decree for Possession in Suit for Declaration of title is not.

See **Civil Procedure Code, Act VIII. of 1859, § 7. 1.**

TULSI RAM *v.* GANGA RAM...**I. L. Rep. 1 All. 252.**

—— Omission of Part of Claim—Leave to withdraw with Liberty to bring Fresh Suit, including Part omitted—Second Suit not barred.

See **Civil Procedure Code, Act. VIII. of 1859, § 7. 2.**

ILAHI BAKSH *v.* IMAM BAKSH... **I. L. Rep. 1 All. 324.**

CAUSE OF ACTION—SPLITTING OF—*contd.*

—— Omission of Part of Claim through Ignorance of Fact caused by Defendant's Fraud, is not.

See **Civil Procedure Code, Act VIII. of 1859 § 7. 3.**

LACHMAN SINGH *v.* SANWAL SINGH. **I. L. Rep. 1 All. 543.**

—— Separate Accounts of Tradesmen.

See **Small Cause Court, Presidency Town. 4.**

CASSUM *v.* THACKUR LILADDUR... **I. L. Rep. 2 Bom. 570.**

—— Simultaneous Suits.

See **Civil Procedure Code, Act VIII. of 1859, § 7. 4. 5.**

KALESHAR *v.* JAGAN NATH...**I. L. Rep. 1 All. 650.**

RAM TARUN *v.* HOSSEIN BUKSH... **I. L. Rep. 3 Cal. 785.**

—— Suit for Declaration of Title without Seeking for Possession—Subsequent Suit for Possession not barred.

See **Civil Procedure Code, Act VIII. of 1859, § 7. 6.**

DARBO *v.* KESHO RAI...**I. L. Rep. 2 All. 356.**

CAUSE OF ACTION—WHOLE CAUSE OF ACTION—*Hundi* payable in Bombay indorsed and delivered at Ajmir.

See **Letters Patent (Bombay), 1865, Cl. 12.**

SUGANCHUND *v.* MULCHUND.. **9 Bom. H. C. Rep. 270; 12 Ibid 113**; and **I. L. Rep. 1 Bom. 23.**

—— Place of Contract or Performance.

See **Jurisdiction. 14.**

MUHAMMED *v.* E. I. RY. CO...**I. L. Rep. 1 Mad. 375.**

CAUSES OF ACTION—Misjoinder of.

See **Misjoinder of Causes of Action. 1. 2.**

GUMANI *v.* RAM CHARAN...**I. L. Rep. 1 All. 555.**

JANOKINATH *v.* RAMRUNJUN...**I. L. Rep. 4 Cal. 949.**

Digitized by Google

CAUSING HURT, AND RIOTING.

See **Offence made up of several Offences.**

EMPRESS *v.* RAM ADHIN.. **I. L. Rep. 2 All. 139.**

CAUSING UNAUTHORIZED DIMINUTION OF WATER SUPPLY.

See **Penal Code, § 430.**

RAMKRISHNA *v.* PALANIYANDI...**I. L. Rep. 1 Mad. 262.**

CAVEAT—Special Citation.

See **Administration. 3.**

HURRI DASS...**I. L. Rep. 4 Cal. 87.**

CAVEAT EMPTOR.

See **Maxims. 1.**

See **Sale in Execution of a Decree. 16.**

THE COURT OF WARDS *v.* GAYAPERSAD...**I. L. Rep. 2 All. 107.**

CERTIFICATE—Commissioner for taking Accounts, Power of—to grant.

See **Account. 3.**

RUSTOMJEE *v.* KESSOWJEE...**I. L. Rep. 3 Bom. 161.**

CERTIFICATE OF ADMINISTRATION OF MINORS' ESTATE—Still necessary to enable a Person to sue on behalf of a Minor.

See **Bombay Minors' Act XX. of 1864, § 2.**

MURLIDHAR *v.* SUPDU. **I. L. Rep. 3 Bom. 149.**

—— *Undivided Hindu Family — Guardianship —Act XX. of* 1864.] Where a member of an undivided Hindu family dies, leaving to his children only his undivided share in the joint family property, a certificate of administration cannot be granted under Act XX. of 1864, nor, under such circumstances, can a guardian of the persons of the minor children be appointed; but if the deceased has left any separate property, a certificate of administration in respect of such property may be granted, and a guardian may be properly appointed at the same time. GURACHARYA *v.* SVAMIRAYACHARYA. *Melvill* and *Kemball*, JJ...**I. L. Rep. 3 Bom. 431, 1879.**

But *see* **L. Rep. 9 I. A. 27; I. L. Rep. 8 Cal. 656.**

CERTIFICATE TO COLLECT DEBTS—

Appeal from Order refusing.

See **Appeal—Civil. 1.**

TARINI CHURN *v.* BAMA SOONDEREE.....**I. L. Rep. 1 Cal. 128, n.**

—— Mortgage by Holder of.

See **Power of Grantee of Certificate to Collect Debts to Mortgage.**

MUNIA *v.* BALAK RAM.....**I. L. Rep. 2 All. 513.**

—— Representative of Assignee by Devise of Debt, cannot sue without—or Probate.

See **Assignee of Debt.**

SHODONE *v.* HALALKHORE...**I. L. Rep. 4 Cal. 645.**

—— Security—Appeal.

See **Appeal—Civil. 4. 16.**

MONMOHINEE *v.* KHATTER GOPAUL...**I. L. Rep. 1 Cal. 127.**

RUKMIN...**I. L. Rep. 1 All. 287.**

—— Unnecessary to entitle Heir of Decree-holder to apply for Execution.

See **Civil Procedure Code, Act VIII. of 1859, § 208.**

KARAM ALI *v.* HALIMA.....**I. L. Rep. 1 All. 686.**

1. —— *Act XXVII. of* 1860 — *Proximity of Kinship and Residence.*] Proximity of kinship and residence are not such considerations as will warrant a Judge in granting a certificate under Act XXVII. of 1860 to any person in preference to another who has *primâ facie* the better title to inherit and to the beneficial ownership of the debts.

Adopting the principle laid down in *Gobind Persad Talookdar* v. *Mohesh Chunder Surma Ghuttack* (15 Beng. L. Rep. 35; S. C., 23 W. Rep. 17) a father's brother's grandson has a right to obtain a certificate under Act XXVII. of 1860 in preference to a brother's daughter's son. *In the matter of the Petition of* OODAYCHURN MITTER. *White* and *Prinsep*, JJ...**I. L. Rep. 4 Cal. 411, 1878.**

See JUGGUT NARRAYAN SINGH *v.* COLLECTOR OF MANBHOOM.....**I. L. Rep. 4 Cal. 413.**

Under **Hindu Law — Inheritance— Brother's Daughter's Son.**

Digitized by Google

CERTIFICATE TO COLLECT DEBTS— *contd.*

2. —— *Act XX. of 1841—Decree in Administration Suit.*] *N.*, a Hindu, died in 1858 without issue, but leaving a widow. *N.* in his life-time had executed a will of which he appointed *D.* and *G.* (his brother and nephew respectively) executors, but according to the construction put upon the will by the Court, they were only appointed for a special purpose, and for a limited period, *viz.*, to look after and take care of the natural or adopted son of the testator during his minority, and only so far as concerned certain property, and *D.* and *G.* took under the will no further interest or powers as executors. The only devise in the will was of the testator's one-third share of certain property to *G.* A certificate to collect debts was granted to *G.* under Act XXI. of 1841. Subsequently, a creditor of *N.* filed a suit for the administration of *N.*'s estate, in which suit *D* and *G.* were made defendants, but the widow of *N.* was not made a party to the suit. A consent decree was made in that suit, which directed that the real estate of *N.* should be sold, and the Receiver of the Court be appointed Receiver to collect the outstandings of *N.*'s estate.

In a suit brought by the widow of *N.* to have a certain settlement deed construed, and, *inter alia*, to establish her right as *N.*'s widow to one-third of the property therein comprised, and for the administration of *N.*'s estate, so far as the same was unadministered :—

Held, that the plaintiff was not bound by the decree, or the proceedings in the creditor's suit, and that the only property of *N.* which could be affected thereby was the property devised by *N.* to *G.*, and any debts of *N.*, which *G.* was authorized to collect and get in under the certificate granted to him. Such certificate only applied to debts and moveable estate, and did not give *G.* any interest in, or authority to receive, or represent immoveable estate; and as *D.* and *G.* had no right to recover and no interest in *N.*'s immoveable estate, any decree made in a suit to which they only were defendants, could not affect the immoveable estate or the person really interested therein; and though the plaintiff had, in her plaint, asked that her present suit should be taken as supplemental to the said creditor's suit, she was not under the circumstances absolutely bound by that portion of her prayer, even if the suit could be so taken. TREEPOORASOONDERY DOSSEE *v.* DEBENDRONATH TAGOREE. *Pontifex*, J.....**I. L. Rep. 2 Cal. 45, 1876.**

CERTIFICATE TO COLLECT DEBTS— *contd.*

3. —— *Act XXVII. of 1860—Question of Validity of Alleged Adoption—Title.*] The appellants, representing themselves as the *gyantees* (cognates) of a deceased Hindu who had died forty years before, applied for a certificate under Act XXVII. of 1860 to collect the debts due to his estate. The application was opposed by the respondents, who claimed a similar certificate for themselves as the widows of an alleged adopted son of the deceased :—

Held, that neither of the applicants was entitled to a certificate, the presumption being that there were no debts due to the deceased which could be recovered, owing to the operation of the law of limitation.

Although in the case of rival applications for certificates to collect debts, under Act XXVII. of 1860, the Judge is bound to inquire which title is made out *for the purposes of the legal requirements of the Act*, yet no question of title can be judicially determined between the parties as the result of the inquiry made under that Act, and the object of the applications in the present case was to obtain a judicial determination of the question whether the alleged adoption had taken place or not; a question which could only be decided in a civil suit. KOONJ BEHARY CHOWDHRY *v.* GOCOOL CHUNDER CHOWDHRY—*Kemp* and *Morris*, JJ...**I. L. Rep. 3 Cal. 616. 1878.**

4. —— *Act XXVII. of 1860—Private Estate of Deceased* Mohunt — *Spiritual Son—Spiritual Brother.*] The person entitled to collect the outstanding debts due to the private estate of a deceased *Mohunt*, is the spiritual son (the *Chela*), and not the spiritual brother (*Guru-bhai*) of the deceased. In re *Bhyrub Bharuttee Mohunt* (21 W. Rep. 340) distinguished on the ground that in that case the debt was not a personal one. DUKARAM BHARTI *v.* LUCHMAN BHARTI. *Anslie* and *Broughton*, JJ...**I. L. Rep. 4 Cal. 954 ; 4 Cal. Rep. 49, 1879.**

CERTIFICATE OF JURY—*Case certified by Advocate-General—Confession improperly received in Evidence.*] On a case certified by the Advocate-General under Cl. 26 of the Letters Patent (Calcutta), 1865, to consider whether a certain confession made by an accused person had been properly received in evidence against him, the Court having held that the confession was in-

Digitized by Google

CERTIFICATE OF JURY—*contd.*

admissible and ought not to have been received, —a certificate by a majority of the Jury who tried the case, to the effect that if the confession had not been in evidence, they would have given a verdict acquitting the prisoner, was tendered but rejected by the Court. REG. *v.* HURRIBOLE CHUNDER GHOSE, *Garth*, C. J., and *Pontifex*, J... **I. L. Rep. 1 Cal. 207**; *see* p. 219, n. S. C. under **Evidence. 13.**

CERTIFICATE PROCEEDINGS UNDER BENGAL ACT VII. OF 1868—*Jurisdiction of Civil Court to inquire into Legality of.*] In a suit for arrears of rent it appeared that the plaintiff held possession of the land out of which the rent issued under a *potta* granted by the owner subsequently to the issue out of a Collector's office of a certificate under Bengal Act VII. of 1868 against the grantor. The defendant was the purchaser of the land in question at the sale held under that Act, and Pleaded that the plaintiff's grantor had no power to grant the *potta* after the certificate had been served. The Court of first instance disbelieved the witness called to prove service of the certificate, and found that no notice was served on the plaintiff's grantor under § 18 of the Act, and therefore upheld the *potta* and gave the plaintiff a decree. The District Judge on appeal reversed this decree, considering that a Civil Court could not say that the procedure followed by the Collector was irregular, and that the proceedings were null and void, but must, as nothing appeared to the contrary, assume that they were regular, and that the party aggrieved could try the correctness of the Collector's proceedings by a regular suit. On appeal to the High Court:—

Held, reversing the District Judge's decree, that in order to meet the plaintiff's case effectually, it was necessary that the defendant should prove the certificate proceedings in a regular way, and the plaintiff was at liberty to question the legality of those proceedings and to show that they were irregular and ineffective. The District Judge, therefore, was bound to examine the proceedings of the Collector, and to see that they were legal and regular, as to constitute a legal bar to the plaintiff's grantor transferring his interest to the plaintiff; and the Judge was not at liberty to make any presumption in favour of their legality or correctness. HEM LOTTA *v.* SREEDHONE BOROOA. *Garth*, C.J., and *Birch*, J...**I. L. Rep. 3 Cal. 771, 1877.**

CERTIFICATE OF REGISTRATION—Effect of.

See **Registration. 23.**

MAHOMED EWAZ *v.* BRIJ LALL...**L. Rep. 4 I. A. 166.**

CERTIFICATE OF SALE, REGISTRATION OF.

See **Registration. 4.**

KANAHIA LAL *v.* KALI DIN...**I. L. Rep. 2 All. 392.**

CERTIFICATED AND UNCERTIFICATED GUARDIANS—Power of.

See **Alienation by Guardian. 2.**

RAM CHUNDER *v.* BROJONATH...**I. L. Rep. 4 Cal. 929.**

See **Mortgage. 30. 31.**

ABHASEE BEGUM *v.* MOHARANEE RAJROOP...**I. L. Rep. 4 Cal. 33.**

DEBI DUTT *v.* SUBOODRA...**I. L. Rep. 2 Cal. 283.**

See **Sale by Guardian.**

SOONDER NARAIN *v.* BENNUD RAM. **I. L. Rep. 4 Cal. 76.**

See **Mahomedan Law—Sale by Guardian.**

HASAN ALI *v.* MEHDI HUSAIN...**I. L. Rep. 1 All. 533.**

See **Review. 10.**

MADHO DAS *v.* RUKMAN SEVAK... **I. L. Rep. 2 All. 287.**

CERTIFIED PURCHASER — SUIT AGAINST.

See **Civil Procedure Code, Act VIII. of 1859, § 260. 1. 2.**

LOKHEE NARAIN *v.* KALYPUDDO... **L. Rep. 2 I. A. 154.**

PURAN MAL *v.* ALI KHAN...**I. L. Rep. 1 All. 235.**

CERTIFIED PURCHASER—SUIT BY.

See **Civil Procedure Code, Act VIII. of 1859, § 260. 1. 3.**

LOKHEE NARAIN *v.* KALYPUDDO... **L. Rep. 2 I. A. 154.**

JAN MUHAMAD *v.* ILAHI BAKSH... **I. L. Rep. 1 All. 290.**

CESSATION OF SERVICE — Right to resume or assess Service Lands on.

See **Ghatwali Tenure.**

LEELANUND SINGH *v.* THAKOOR MUNRUNJUN...**I. L. Rep. 3. Cal. 251.**

Digitized by Google

CESSATION OF SERVICE—*contd.*

See **Resumption. 2.**

KEVAL KUBER *v.* TALOOKDAREE SETTLEMENT OFFICER...**I. L. Rep. 1 Bom. 586.**

CESSER OF RESIDENCE.

See **Will. 10.**

TAGORE *v.* TAGORE...**L. Rep. 1 I. A. 387.**

CESSES—Zemindari.

See **Custom. 4.**

LACHAMAN RAI *v.* AKBAR KHAN... **I. L. Rep. 1 All. 440.**

—— Zemindari—Suit for—Jurisdiction of Mofussil Small Cause Court.

See **Small Cause Court — Mofussil. 4.**

NANKU *v.* BOARD OF REVENUE... **I. L. Rep. 1 All. 444.**

—— Zemindari Right to—Suit for Declaration of.

See **Declaratory Decree. 8.**

AKBAR KHAN *v.* SHEORATAN..... **I. L. Rep. 1 All. 373.**

CESSES—*Custom—Act XIX. of* 1873 (*N. W. P. Land Revenue Act*), § 66.] A cess leviable in accordance with village custom which is not recorded under the general or special sanction of the Local Government cannot, under § 66 of Act XIX. of 1873, be enforced in a Civil Court.

A custom to be valid must be ancient, must have been continued and acquiesced in, and must be reasonable and certain.

The fact that a cess leviable in accordance with village custom has been recorded by a settlement officer is important evidence of the custom, but not conclusive proof of it. LALLA *v.* HIRA SINGH. *Stuart*, C. J., and *Oldfield*, J... **I. L. Rep. 2 All. 49, 1878.**

CESSION OF TERRITORY—*Prerogative of the Crown.*] The Crown is competent to cede territory in British India in time of peace, to a foreign prince or feudatory, without the intervention of the Imperial Parliament. The prerogative of the Crown is exercised with the advice and through the agency of the responsible Ministers of the Crown; and when a cession of territory is proved to have been made by the Government of India, and accepted by the Secretary of State as

CESSION OF TERRITORY—*contd.*

fulfilling instructions conveyed to the Government of India, an to have been approved of by Her Majesty's Government, that is sufficient evidence of a cession by the Crown; and when it is proved that a cession has been so made, it is not comptent to the Civil Courts in British India to enquire whether in the particu instance the exercise of the prerogative was called for.

In determining whether or not there has been a cession of territory in full sovereignty, the Court will look, not to the documents by which the transfer is made as operating by their own force to transfer sovereignty, but will look to what was done, though the language of the documents may be considered as evidence of what was intended to be done. The circumstance that the transfer was recorded in a *sanad*, is not incompatible with a cession, nor is it inconsistent with a cession of sovereignty that it should be accompanied by conditions for the benefit of the inhabitants of the ceded territory, *e.g.*, that existing rights and tenures should be respected.

The Nawab of Rampur is in possession of such powers of sovereignty as are enjoyed by the feudatories of the Empire, and the State of Rampur is held by him, subject indeed to the extraordinary control of the Paramount Power, but otherwise independent; and such sovereignty is not inconsistent with the name "*Jaghir*" which was applied to the territory before the cession of Rohilkhand, and has since been retained.

By a *sanad* dated the 23rd June 1860, executed by the order of the Governor-General, and ratified and confirmed by the Secretary of State, 19 villages in Bareilly and Moradabad were, in consideration of services rendered by him during the Mutiny, granted to the Nawab of Rampur and "annexed to the old territory of the Nawab on the same conditions on which he holds that territory." Possession of the villages was given to the agents of the Nawab, to whom also the revenue records were delivered, and from the date of the grant, administrative and judicial functions were exercised in the village under no other authority than that of the Nawab, who, in answer to a communication from the Lieutenant-Governor with reference to a petition presented to the Government of India by the Zemindars of the transferred villages for the maintenance of their proprietary rights, assured the Lieutenant-Governor that the rights of the petitioners should be respected.

Digitized by Google

CESSION OF TERRITORY—*contd.*

In a suit brought in 1876 on a mortgage bond executed in 1871, mortgaging, among other property, these 19 villages, to enforce the mortgage debt by sale of the villages: *Held*, that the villages had passed by valid cession out of British territory before the institution of the suit, and that the Court of the Subordinate Judge of Bareilly, in which the suit was instituted, had no jurisdiction to order a sale of them. LACHMI NARAIN *v.* RAJA PERTAB SINGH...I. L. Rep. 2 All. 1 1878, F. B.

2. —— *Prerogative of the Crown—Transfer of Jurisdiction—Concurrence of Imperial Parliament—Evidence Act I. of* 1872, § 113.] In the province of Kattywar, subject in its entirety since 1820 to the supreme authority of the British Government, the Thakoor of Bhownuggur was possessed of certain talooks, which had never been brought under the ordinary British administration, and in which the Thakoor exercised a wide civil and criminal jurisdiction, subject only to the supervision, laws and regulations of the Kattywar Political Agency. He also possessed within the same province other talooks, including Gangli, which in 1802 had been ceded to the British Government, and in 1815 had been placed under the ordinary jurisdiction of the British Courts of the Bombay Presidency. In 1848, Gangli was included in a lease granted by the British Governnment to the Thakoor, which, by mutual agreement, dated 23rd of October 1860, was cancelled, and thereunder the British Government conceded, "as a favour, and not as a right, the transfer of Gangli and other territories from the district of Gogo subject to the regulations, to the Kattywar Political Agency." Delay having arisen in completing this transfer, the Governor-General in Council, on the 31st of May 1865, authorized its completion, "Her Majesty's Secretary of State having decided that Kattywar was not British territory." Thereafter, on the 29th of January 1866, it was notified, in effect in the *Bombay Government Gazette*, that Gangli, by reason of the cession thereof by the British Government to the Thakore of Bhownuggur, was removed, from and after the 1st of February of that year, from the jurisdiction of the Revenue, Civil and Criminal Courts of the Bombay Presidency, and transferred to the supervision of the Political Agency in Kattywar, on the same conditions as to jurisdiction as the villages of the talooka of the Thakoor of Bhownuggur heretofore in that province. And on the 4th of January 1873 (after the Evidence Act I. of 1872 had come into operation), it was notified in effect in the Indian *Gazette* that Gangli was, on the 1st of February 1866, ceded to the State of Bhownuggur.

CESSION OF TERRITORY—*contd.*

Previous to the notification in 1866, a decree for redemption of mortgaged lands in Gangli was made by the British Court of Gogo, and reversed by the Judge of Ahmedabad, the case being subsequently remanded by the High Court of Bombay to the Judge, who thereupon restored the original decree, notwitstanding that in the interval the first-mentioned notification had appeared. The High Court confirmed this order, holding, on review, that the power to cede territory was not one of the powers to which the Secretary of State suceeded under the Act (Stat. 21 & 22 Vict., C. 106,) transferring the Government of India to Her Majesty, as it was not one of the powers possessed by the East India Company, either alone, or by the direction and with the sanction of the Commissioners of the Affairs of India.

And that the Indian Legislature could not make, and the Crown could not sanction, a law having for its object the dismemberment of the State in time of peace, as such a law must of necessity affect the authority of the Parliament, and those unwritten laws and constitutions of the United Kingdom of Great Britain and Ireland whereon depends the allegiance of persons to the Crown of the United Kingdom.

And that § 113 of the Evidence Act (I. of 1872) was, therefore, not protected (though not disallowed) by Stat. 24 & 25 Vict., C. 67, § 24, and the direction therein contained that a notification in the *Gazette of India*, that any portion of British teritory had been ceded to any Native State, Prince, or Ruler, shall be conclusive proof that a valid cession of territory took place on the date mentioned in such notification, could not be followed.

Held, on appeal from this last-mentioned order that the appeal must be dismissed, but without reference to the question whether the law laid down by the High Court was correct, though their Lordships entertained such grave doubts (to say no more) of the soundness of the general and abstract doctrine laid down by the High Court, as to be unable to advise Her Majesty to rest her decision on that ground. But in point of fact there had been

Digitized by Google

CESSION OF TERRITORY—*contd.*

no cession of territory. The language of the above agreement of 1860 was not the language of cession. It was *primâ facie* nothing more than an engagement for the transfer of the places mentioned (including Gangli), which were then, beyond question, British territory, from a regulation province to an extraordinary jurisdiction. Nor would the opinion attributed by the Governor-General in Council in 1865, when authorizing the completion of the transfer contemplated by the agreement of 1860, to the Secretary of State for India, *viz* "that Kattywar was not British territory," even if it had been proved to have been expressed, and to have been well founded, have the effect of converting a transfer of certain British territories from ordinary British jurisdiction "to the supervision, laws, and regulations of the Kattywar Political Agency," into a cession of British territory to a Native State. Such a cession would be a transaction too important in its consequences, both to Great Britain and to subjects of the British Crown, to be established by any uncertain inference from equivocal acts.

A re-arrangement of jurisdiction within British territory by the transfer of British territories from an ordinary British jurisdiction to the supervision, laws, and regulations of a Political Agency, by excluding such territories from the British regulations and codes theretofore in force therein, and from the jurisdiction of all the High Courts, with a view to the establishment therein of a native jurisdiction under British supervision and control, cannot be effected without a legislative Act.

Such transfer of jurisdiction, even if valid without a legislative Act, would not deprive the Crown of its territorial rights over the transferred district, or the persons resident therein of their rights as British subjects.

The jurisdiction, therefore, of the British Courts of the Bombay Presidency over Gangli rested, in 1866, on British Statutes, and could not be taken away (as long as Gangli remained British territory) so as to substitute for it any native or other extraordinary jurisdiction, except by legislation in the manner contemplated by 3 & 4 Wm. IV., C. 85, § 43, 24 & 25 Vict., C. 67, § 22, 24 & 25 Vict., C. 104, § 9.

The Governor-General in Council being precluded by Stat. 24 & 25 Vict., C. 67, § 22, from legislating directly as to the sovereignty or

CESSION OF TERRITORY—*contd.*

dominion of the Crown over any part of its territories in India, or as to the allegiance of British subjects, cannot, by any Legislative Act purporting to make a notification in a *Government Gazette* conclusive evidence of a cession of territory, exclude inquiry as to the nature and lawfulness of that cession.

If Gangli had by valid cession ceased to be British territory, the foundation of the jurisdiction of the British Courts of the Bombay Presidency over the subject-matter of this suit, and the parties thereto, being territorial, could no longer be exercised (whatever might be the stage or condition of the litigation at the time), after such a valid cession had been made. DAMODHAR GORDHAN *v.* DEORAM KANJI...**L. Rep. 3 I. A. 102, 1875**; S. C. **I. L. Rep. 1 Bom. 397**; **L. Rep. 1 App. Ca. 332.**

CESTUI-QUE-TRUST CREDITOR—Proof by—in Insolvency.

See **Insolvency. 7.**

VARDALA CHARRI...**I. L. Rep. 2 Mad. 15.**

CHAKERAN LANDS—*Ejectment—Occupancy Right.*] A distinct refusal by a tenant to perform services incidental to his holding renders him liable to ejectment.

Semble.—No right of occupancy can be acquired in lands held under a service tenure. HURROGGOBIN RAHA *v.* RAMRUTNO DEY. *Garth*, C. J., and *McDonnell*, J...**I. L. Rep. 4 Cal. 67, 1878.**

CHALWADI—Office of.

See **Disturbance of Office. 1.**

SHANKARA *v.* HAMNA...**I. L. Rep. 2 Bom. 470.**

CHAMPERTY.

See **Lessor and Lessee.**

LOKENATH GHOSE *v.* JUGOBUNDHOO ROY...**I. L. Rep. 1 Cal. 297.**

1.——*Maintenance—Undue Influence—Consideration—Novation.*] *A.*, a stranger, advanced money to enable *B.*, *C.*, and *D.*, childless Hindu widows, on a false claim of inheritance, to take the estate of the family from *E.*, the rightful heir; *A.* got the entire control of the suit and of the affairs of *B.*, *C.*, and *D.*; and *B.*, *C.*, and *D.* executed an instrument purporting to secure to *A.* a large sum of money on their obtaining the property, and also gave him a bond for a sum alleged to have been advanced by him.

Digitized by Google

CHAMPERTY—*contd.*

B., *C.*, and *D.* having agreed with *E.* to withdraw the suit upon terms of compromise, *E.* was induced to execute a bond to *A.*, by which *E.* in effect engaged to pay to *A.*, in discharge of his claim upon *B.*, *C.*, and *D.*, a fixed sum, which was claimed by *A.* as the amount due to him; and *A.* agreed to abandon his claim upon them on such payment, retaining the securities he held from them till *E.*'s bond was satisfied.

At the time of entering into this bond, *E.* had only just attained his majority, was without proper counsel or assistance, and was threatened by *A.* with the consequences of not immediately acquiescing in his demand, the threats not being of bodily violence but of carrying on the suit to his ruin; and such threats overcame his free will, and induced him, contrary to his own judgment and sense of right, and without any evidence that the sum claimed was due, to execute the bond.

On a suit by *A.* to enforce the bond:—

Held, 1st, that, assuming that there was a real substantial debt due to *A.* from *B.*, *C.*, and *D.* on an agreement to which no objection could be taken; that there was a *bonâ fide* arangement by which *B.*, *C.*, and *D.* were to have their suit dismissed; and that one term of that arrangement was that they should be relieved of the debt due to the plaintiff; yet the transaction would not amount to a novation. *B.*, *C.*, and *D.* were not, by the transaction, released altogether from the debt which they had incurred to the plaintiff, nor was the plaintiff's position altered by reason of his having lost his remedy against them; for on the face of the bond executed by *E.*, he, *A.*, was to retain the securities against *B.*, *C.*, and *D.* until the bond was paid; the contract on his (*A.*'s) part was, in fact rather an agreement to abandon his remedy against *B.*, *C.*, and *D.* on the payment of the Rs. 67,000, than an actual abandonment at the time of the transaction.

2ndly, though the law of champerty or maintenance is not the same in India as it is in England (the Statute of Champerty being part of the Statute law of England, and of no effect in the Mofussil of India)—and the Courts of India admit the validity of many transactions of that nature, which would not be recognized or treated as valid by the Courts in England, yet the Indian Courts will not sanction every description of maintenance. Administering—as those Courts

CHAMPERTY—*contd.*

are bound to administer—justice according to the broad principles of equity and good conscience, they will consider whether the transaction is merely the acquisition of an interest in the subject of litigation *boná fide* entered into, or whether it is an unfair or illegitimate transaction got up for the purpose merely of spoil or of litigation, disturbing the peace of families, and carried on from a corrupt or other improper motive; and the Courts would be exercising a very unsound discretion, and acting on a very erroneous principle, if they were to allow a stranger to interfere in family affairs, by an agreement between him and the real heirs that, if they should establish their claim, he should be entitled to a share of the estate. Applying these principles, *quære* whether the plaintiff could have recovered on the agreement between himself and *B.*, *C.*, and *D.*, if the question had arisen between him and them after he had got the estate for them; but however that might be it would be contrary to every sound principle of justice and policy to permit the plaintiff, who had got up, or at all events intervened in, a suit in which he had no necessary concern; who had made himself *dominus litis* in that suit, and acquired over the plaintiffs in it (*B.*, *C.*, and *D.*) the power of preventing them from doing what they felt to be right and just (*i.e.*, of compromising and bringing about a family arrangement), and from interested and corrupt motives was exercising that power, to make that power the means of extorting a large sum of money from the person whose title had been unjustly challenged.

3rdly, that the transaction was not one entered into between two persons, each of whom was capable of taking care of himself; the defendant being, at the time of the transaction, a boy of 18, without proper counsel or assistance, and prevented from being a free agent by the threats held out to him; and that the bond, therefore, was wholly void as against *E.*, and could not be made to stand as a security for what might really have been advanced by *A.* to *B.*, *C.*, and *D.*, as nothing was ever due by *E.* to *A.*, and there existed no privity of contract between them. —CHEDAMBARA CHETTY *v.* RUNGA KRISHNA MUTHU VIRA PUCHAIYA NAICKAR...**L. Rep. 1 I. A. 241; 13 Beng. L. R. 509; 22 W. R. 148, 1874.**

2. —— *Maintenance—Agreement to share the Subject of Litigation, when against Public*

Digitized by Google

CHAMPERTY—*contd.*

Policy—Non-Liability of Stranger to the Record for Costs of Suit, in Absence of Malice and Want of Probable Cause.] The respondent was, by an agreement between him and *M.* and his wife, which recited an apparently good title of the latter to certain property, apointed the attorney and mooktear of *M.* and his wife to conduct certain suits to recover that property from the appellant, and he managed the said suits, and made all the necessary advances for that purpose and for the subsistence of *M.* and his wife, having stipulated that all the advances should be repaid with interest at 12 per cent., and that as remuneration for his trouble and risk, the respondent should have a third part of the clear net profits of the suits, and, as security, should receive all moneys, and take possession of all lands recovered. He was neither an original nor an added party to the suits, which, on appeal, were decreed in favour of M. and his wife by the High Court, but were afterwards dismissed by the Privy Council with costs, which *M.* and his wife were utterly unable to pay. Pending that appeal, the respondent purchased the property in suit, and thereafter conducted the appeal in his own interest.

In an action brought by the appellants against the respondent to recover the amount of costs incurred by them in the above litigation, it was alleged, but not proved, that the suits were brought or instigated by the respondent maliciously and without probable cause; and failing such proof, it was contended (1) that the agreement and acts of the respondent amounted to champerty, or were otherwise illegal as being against public policy, and that the appellants had suffered special damage from them; and (2) that the respondent was the real actor in the former suits and had an interest in them, and was, therefore, responsible for the costs of them.

Held, that the English laws of maintenance and champerty are not of force as specific laws in India. So far as concerns the Mofussil, there is no ground on which it can be contended that those laws are in force there; and the condition of the Presidency towns, inhabited by various races of people, and the legislative provision directing all matters of contract and dealing between party and party to be determined in the case of Mahomedans and Hindus by their own laws and usages respectively, or where only one of the parties is a Mahomedan or Hindu by the laws and usages of the defendant, furnish

CHAMPERTY—*contd.*

reasons for holding that these special laws are inapplicable to the Presidency towns.

A fair agreement to supply funds to carry on a suit in consideration of having a share of the property, if recovered, ought not to be regarded as being, *per se*, opposed to public policy. But agreements of this kind ought to be carefully watched, and when found to be extortionate and unconscionable, so as to be inequitable as against the party; or to be made, not with the *bonâ fide* object of assisting a claim believed to be just, and of obtaining a reasonable recompense therefor, but for improper objects, as for the purpose of gambling and litigation, or of injuring or oppressing others by abetting and encouraging unrighteous suits, so as to be contrary to public policy,—effect ought not to be given to them. Whenever the right of the parties to this agreement as between themselves, might be, it did not constitute a punishable offence, and could not give to the appellants, who were strangers to it, a right of action against the respondent.

Such agreement created no legal privity between the appellant and respondent, from which a promise could be implied on the part of the respondent to pay the appellant the costs of the former suit on which an action of contract could be founded; nor did it establish a legal wrong, for the former action was brought without improper motives and upon reasonable cause.

An action cannot be maintained against a third person on the ground that he was a mover of, and had an interest in, the suit, in the absence of malice and want of probable cause. *Cotterell* v. *Jones* (11 C. B. 735) approved.

Where it appears that the plaintiff in a suit is in fact suing on behalf of another person who is not a party to the record, the ordinary practice is to require security for costs, and to stay proceedings till it is given.

The fact that an application to the Court, under § 73 of Act VIII. of 1859, to make a stranger who has an interest in the suit a co-plaintiff, was rejected, will not give ground for an action against such stranger for costs incurred in the suit which would not otherwise lie. RAM COOMAR COONDOO *v.* CHUNDER CANTO MOOKERJEE. **L. Rep. 4 I. A. 23, 1876; I. L. Rep. 2 Cal. 233; L. R. 2 App. Ca. 186.**

Digitized by Google

CHAMPERTY—*contd.*

3. —— *Maintenance and Champerty.*] In June 1869, *P.*, the liquidator of the National Financial Company, compromised the claims of the Company against the defendant Mulji Kanji, for Rs. 15,000. *P.* was induced to agree to this compromise in consequence of representations made to him by the friends of Mulji Kanji, that the latter had no available assets and could not meet his liabilities. In 1878 the plaintiff, who was neither a creditor nor shareholder of the Company, alleging that the compromise had been fraudulently effected, and that the defendant Mulji Kanji, at the time of the compromise had been, and still was, possessed of property amply sufficient to pay off his debts, induced the liquidator of the Company to assign to him the Company's claim against Mulji Kanji, and brought this suit praying that the compromise with *P.* might be declared not binding, and that Mulji Kanji might be ordered to pay the plaintiff, as assignee of the National Finance Company, the sum of Rs. 1,61,500.

The liquidator, by a letter of the 3rd of October 1878, addressed to the plaintiff's solicitors, after recapitulating the information he had previously given relating to the compromise of the claim against Mulji Kanji, stated as the conditions on which he accepted the consideration-money for the assignment to be, (1) that even if it should appear that there was no spark of assignable interest remaining in the Company, the consideration-money should not be refundable; (2) that he should execute an assignment of the Company's claim against Mulji Kanji, such as it was, with all its defects, there being no warranty on his part that the Company had any assignable interest, and that the assignment should contain the usual power for the plaintiff to use the Company's name in any proceeding he might be advised to adopt; and (3), that the plaintiff should indemnify the Company and the liquidator against costs.

On the 21st January 1879, the liquidator executed an assignment deed which recited the compromise, and that it was alleged on behalf of the plaintiff to be null and void, and the liquidator had consented to assign the Company's claims against Mulji Kanji to the plaintiff; and stated that the liquidator was unwilling to embark in litigation at his own risk when he entered into the above transaction with the plaintiff, and concluded with a covenant by the plaintiff to indemnify the liquidator against all costs. The liquidator did not make an allegation of fraud in respect of the compromise of Mulji Kanji's claim, nor did he verify the plaint which alleged fraud:—

CHAMPERTY—*contd.*

Held, that according to the English law the real test in cases of this nature was whether the transaction was a *bonâ fide* purchase of the matter in dispute, or one for the purpose of maintaining or proceeding with the litigation; and where such is the case, Courts of Law and Equity will treat the transaction as an infringement of the laws against champerty and maintenance, and as having neither validity between the parties thereto, nor conferring any right of action against third parties. And though the principles to be deduced from the decision of the Privy Council in *Ram Coomar* v. *Chunder Canto Mookerjee* (L. Rep. 4 I. A. 46) and *Chedambara Chetty* v. *Ranga Krishna Naickar* (L. Rep. 1 I. A. 241) are more elastic than the rules which are to be gathered from the English decisons on the law of Maintenance and Champerty, and though it may be that some transactions, effected under special circumstances, albeit for the purpose of and with a view to litigation, may be supported in India—yet, the present was a case of a stranger officiously interfering for reasons of his own, and in no way at the request or even suggestion of the company or liquidator, in a matter in which he had himself no connexion whatever, with the sole object of enabling himself to dispute transactions which occurred ten years ago, and in which independently of the assignment he had no interest whatever, the assignment being effected with a view to litigation by a person himself unwilling to litigate. A suit of such a nature and instituted under such circumstances fell within the class of cases which both the English law and the principles enunciated by the Judicial Committee alike forbid. GOCULDAS JAGMOHADAS v. LAKMIDAS KHIMJI. *Sargent*, J...I. L. Rep. 3 Bom. 402, 1879.

CHANGE IN FORM OF SUIT.

See **Amendment of Plaint.**

See **Land Tenures in Kanara.**

See **Suit for Confirmation of Possession.**

See **Variance between Written Statement and Proof.**

Digitized by Google

CHARGE—Amendment of—Sanction to prosecute under § 211, Penal Code, authorizes Charge under § 192.

See **Criminal Procedure Code, Act X. of 1872, § 142. 1.**

EMPRESS *v.* NIPCHA...**I. L. Rep. 4 Cal. 712.**

—— Vagueness of—of False Evidence.

See **Criminal Procedure Code, Act X. of 1872, § 471. 2.**

REG. *v.* BAIJOO LALL...**I. L. Rep. 1 Cal. 450.**

—— Vagueness of—under § 217 of Penal Code.

See **Charge. 1.**

IMPX. *v.* BABAN KHAN.....**I. L. Rep. 2 Bom. 142.**

—— Vagueness of—under §§ 292 and 294 of Penal Code.

See **High Court Criminal Procedure Act X. of 1875, § 147. 4.**

And *see* **Charge. 2.**

REG. *v.* UPENDRONATH DOSS....**I. L. Rep. 1 Cal. 356.**

—— Withdrawal of.

See **Criminal Procedure Code, Act X. of 1872, § 210.**

In re MUSE,..**I. L. Rep. 2 Bom. 653.**

1. —— *Vagueness of Charge.*] The accused was charged under § 217 of the Penal Code; but the charge did not state distinctly what the direction of the law was, which he had disobeyed, or how he had disobeyed it.

Held, that the charge did not give the accused the information which the law intended him to have of the particular offence, expressed circumstantially, to which he was called upon to answer; that the accused having been convicted on such charge so vaguely expressed, the prosecution on appeal must be limited to the sense in which the charge was understood at the trial. IMPX. *v.* BABAN KHAN.....**I. L. Rep. 2 Bom. 142.**

2. —— *Penal Code, §§ 292-294 — Specific Charge.*] *Semble*—That a charge under §§ 292 and 294 of the Penal Code should be made specific in regard to the representations and words alleged to have been exhibited, uttered, and to be obscene; and the Court, in its decision of the matter, should state distinctly what were the particular representations and words which it finds on the

CHARGE—*contd.*

evidence the accused persons had exhibited and uttered, and which it adjudges to be obscene within the meaning of those sections. REG. *v.* UPENDRONATH DOSS. *Phear* and *Markby*, JJ....**I. L. Rep. 1 Cal. 356, 1876.**

S. C. under **High Court Criminal Procedure Act X. of 1875, § 147. 4.**

CHARGE ON LAND—Transfer of the Land.

See **Covenant running with the Land.**

ABADI BEGUM *v.* ASA RAM...**I. L. Rep. 2 All. 162.**

CHARGES—Joinder of.

See **Criminal Procedure Code, Act X. of 1872, § 452.**

REG. *v.* HANMANTA...**I. L. Rep. 1 Bom. 610.**

CHARITABLE BEQUEST—Uncertainty—Void Request.

See **Hindu Law—Will. 3.**

SURBOMUNGOLA *v.* MOHENDRONATH.....**I. L. Rep. 4 Cal. 508.**

See **Will. 7.**

DWARKANATH *v.* BURRODA PERSAUD...**I. L. Rep. 4 Cal. 443.**

CHARITABLE TRUST—Purchaser with Notice of.

See **Hindu Law—Will. 10.**

MANIKLAL *v.* MANIKSHAH...**I. L. Rep. 1 Bom. 269.**

CHARITY—Bequest to a—which has ceased to exist—Cy-près.

See **Will. 11.**

MAYOR OF LYONS *v.* ADVOCATE GENERAL OF BENGAL.....**I. L. Rep. 3 I. A. 32; I. L. Rep. 1 Cal. 303.**

CHARITY PROPERTY—Alienation of, by Trustee.

See **Breach of Trust.**

MANIKLAL *v.* MANIKSHAH...**I. L. Rep. 1 Bom. 269.**

CHARTER ACT.

See **Stat. 24 & 25 Vict., C. 104.**

CHEATING—Compounding Offence of.

See **Compounding Offences. 1.**

REG. *v.* LAKHU.....**I. L. Rep. 1 Bom. 158, n.**

Digitized by Google

CHELA—Right of—to Certificate to collect Debts due to Private Estate of Deceased *Mohunt*, to Exclusion of *Guru-bhai*.

See **Certificate to collect Debts. 4.**

DUKHARAM *v.* LUCHMUN.....**I. L. Rep. 4 Cal. 954.**

—— Right of—to succeed to *Guru*.

See **Hindu Law—Inheritance—Saniasis.**

MADHO DAS *v.* KAMTA DAS.....**I. L. Rep. 1 All. 539.**

CHEQUE IN PAYMENT OF DEBT—Tender of—Costs.

See **Tender. 1.**

BOYLE CHUND SINGH *v.* MOULARD. **I. L. Rep. 4 Cal. 572.**

CHILDLESS WIDOW—Daughter's Succession by Survivorship not defeated by becoming a.

See **Hindu Law — Inheritance—Daughters. 2.**

AUMIRTOLALL BOSE *v.* RAJONEKANT MITTER.....**L. Rep. 2 I. A. 113.**

CHILDLESS WIDOWED INDIGENT DAUGHTER—RIGHT OF, TO INHERIT—Benares Law.

See **Hindu Law — Inheritance — Daughters. 3.**

SRIMATI UMA DEVI *v.* GOKOOLANAND...**L. Rep. 5 I. A. 40; I. L. Rep. 3 Cal. 587.**

CHILDLESS WIDOW OF PREDECEASED SON OF A PARSI INTESTATE.

See **Act XXI. of 1865, § 5.**

M. K. DAVUR *v.* MITHIBAI...**I. L. Rep. 1 Bom. 506.**

CHOSE IN ACTION—Assignment of.

See **Assignment of Chose in Action.**

KANHAIYA LAL *v.* DOMINGO...**I. L. Rep. 1 All 732.**

CIRCULAR ORDERS OF THE CALCUTTA HIGH COURT, Nos. 41 OF 1866 (2nd OCTOBER) AND 25 OF 1870 (25th AUGUST)—Power of District Judge to interfere with an Order for Local Investigation.

See **Local Investigation.**

NIROD KRISHNO ROY *v.* WOOMANATH MOOKERJEE...**I. L. Rep. 4 Cal. 718.**

CIVIL PROCEDURE CODE, ACT VIII. OF 1859—§ 2.

See the cases collected under **Res Judicata.**

—— § 5—Dwelling—Residence.

See **Jurisdiction. 3.**

FATIMA BEGAM *v.* SAKINA BEGAM. **I. L. Rep. 1 All. 51.**

—— § 5—Redemption Suit—Lands situated in different Districts.

See **Jurisdiction. 4.**

GIRDHARI *v.* SHEORAJ...**I. L. Rep. 1 All. 431.**

—— § 6—*Act XXIII. of* 1861, § 38—*Miscellaneous Proceedings—Execution of Decree—Transfer.*] The provisions of § 6 of Act VIII. of 1859 are extended to miscellaneous proceedings, and proceedings in execution are "miscellaneous proceedings" within the meaning of that term in § 38 of Act XXIII. of 1861. A District Court, therefore, is competent, under § 6 of Act VIII. of 1859, and § 38 of Act XXIII. of 1861, to transfer to its own file proceedings in execution of decree pending in a Court subordinate to it. GYA PARSHAD *v.* BHUP SINGH...**I. L. Rep. 1 All. 180, 1876, F. B.**

—— § 7—Specially registered Simple Mortgage Bond—Money Decree on—Subsequent Suit to enforce Lien on Mortgaged property.

See **Res Judicata. 22.**

DOSS MONEY DOSSEE *v.* JONMENJOY MULLICK...**I. L. Rep. 3 Cal. 363.**

—— § 7—Splitting Cause of Action—Separate Accounts of Tradesman.

See **Small Cause Court—Presidency Town. 4.**

CASSUM *v.* THAKOOR LILLADUR... **I. L. Rep. 2 Bom. 570.**

1. —— § 7.—*Splitting Cause of Action.*] Section 7 of Act VIII. of 1859 does not apply to cases in which a plaintiff, though entitled to claim more than one kind of relief in a suit, omits to seek relief in respect of a portion of his claim in such suit, and seeks for the time one remedy only.

Therefore, where the plaintiff in 1864 sued the defendant's father for a declaration of his rights on a deed of sale executed by him in the plaintiff's favour, on the ground that the defendant's

Digitized by Google

CIVIL PROCEDURE CODE, ACT VIII. OF 1859—*contd.*

father had failed to fulfil his promise to put him in possession, and obtained a decree declaring his rights :—

Held, that a subsequent suit brought against the defendant to obtain possession of the land sold under the deed, and mesne profits, was not barred by § 7 of Act VIII. of 1859. TULSI RAM v. GANGA RAM. *Turner* and *Spankie*, JJ....**I. L. Rep. 1 All. 252, 1876.**

2. —— § 7.—*Omission of Part of Claim—Withdrawal of Suit—Institution of Fresh Suit including Part of Claim omitted.*] Where the plaintiffs in a suit were permitted to withdraw the same with a view to bringing a fresh suit, which should include a portion which had been omitted before of the claim arising out of the cause of action, and such fresh suit was brought, the additional portion of the claim in that suit was *held* not to be barred by § 7 of Act VIII. of 1859. ILAHI BAKSH v. IMAM BAKSH. *Stuart*, C.J., and *Pearson*, J.....**I. L. Rep. 1 All. 324, 1876.**

3. —— § 7.—*Relinquishing or Omitting to sue for Portion of Claim—Fraud—Concealment.*] *S.*, as one of the heirs of his brother *M.*, sued the sons of *M.*, the other heirs of *M.*, for, amongst other things, a declaration of his right to share in the rights and interests of *M.* as the mortgagee under a deed of mortgage, which he valued at the amount of the principal sum advanced under the mortgage, *viz.*, Rs. 5,000, stating his cause of action to be the obstruction caused by the sons of *M.* to his sharing in *M.*'s estate. He obtained a decree declaring his title to the share claimed. *S.*, one of the sons of *M.*, had fraudulently concealed from and kept *S.* in ignorance of the fact that previously to the suit he had realized Rs. 8,624 under the mortgage. On this fact coming to *S.*'s knowledge, he sued the sons of *M.*, to recover his share of that sum :—*Held*, that this second suit was not barred by Act VIII. of 1859, § 7. *Bulwunt Singh* v. *Chittan Singh* (H. C. Rep. N. W. P. 1871, p. 27) followed. LACHMAN SINGH v. SANWAL SINGH.....**I. L. Rep. 1 All. 543.**

4. —— § 7.—*Relinquishing or Omitting to sue for Portion of Claim—Simultaneous Suits.*] The plaintiff instituted two suits at the same time ; one against *Y.*, lambardar, for profits of a mouza for 1281 and 1282 Fasli, the other against *Y.* and another shareholder, *B.*, for a settlement

CIVIL PROCEDURE CODE, ACT VIII. OF 1859—*contd.*

of the account of the *Sir*-land held jointly by the parties for 1281, 1282, and 1283, Fasli :—

Held, that even assuming that the accounts of the *Sir*-land were included in the general accounts of the profits of the village which the lambardar was liable to account for to the plaintiff, so as to give in both suits the same cause of action to the plaintiff against *Y.*, the second suit would not necessarily be unmaintainable against *B.*, and even as against *Y.* the provisions of § 7 of Act VIII. of 1859 would not bar such suit. The claims were divided for convenience of trial, but the plaints in the two suits were filed at the same time, and there was no relinquishment of a claim, nor would there be any question of entertaining a suit after such relinquishment or omission within the meaning of § 7. If the Court in which the plaints were filed considered they should have been tried together, the proper course was to allow one of the plaints to be amended, so as to combine both claims. KALESHAR PRASAD v. JAGAN NATH. *Pearson* and *Oldfield*, JJ.....**I. L. Rep. 1 All. 650, 1878.**

5. ——§ 7.—*Splitting Cause of Action.*] The plaintiff sued in the Court of the Munsiff of Sealdah for a certain sum due on a khatta-book ; and he also brought another suit in the Sealdah Small Cause Court for the balance of the price of grain sold by him to the defendant. The defendant in the Small Cause Court objected that the suit instituted there could not proceed, inasmuch as he had given a *hatchitta* to the plaintiff which would show that the two accounts were not separate but one. The plaintiff then filed a supplemental plaint in the Munsiff's Court, enhancing his claim by the amount sued for in the Small Cause Court. The defendant pleaded that the plaintiff having at first omitted to sue for this sum, could not include it in the present suit :—

Held, that as the suit was originally laid, the causes of action were distinct, but when the plaintiff sued on the *hatchitta* they became united, and therefore, as the suit was originally laid, there was no relinquishment within the terms of § 7 of Act VIII. of 1859, and that the amendment of the plaint was rightly made. *Mohummud Zahoor Ali Khan* v. *Thallooranee Rutta Koer* (11 Moo. I. A. 68) followed. RAM TURRUN KOONDOO v. HOSSEIN BUKSH. *Markby* and *Prinsep*, JJ.....**I. L. Rep. 8 Cal. 785 ; 2 Cal. Rep. 385, 1878.**

Digitized by Google

CIVIL PROCEDURE CODE, ACT VIII. OF 1859—*contd.*

6.—— § 7.—*Splitting Clause of Action.*] The plaintiff, on her husband's death, sued the defendant for a declaration of her title to succeed, as her husband's heir, to certain property, and for a declaration that the defendant was not the adopted son of her deceased husband. On appeal, the High Court held that she was entitled, for the protection of the property in her possession, to a decree that the defendant was not the adopted son of her deceased husband, and in respect of the property of which she was not in possession, (and for the possession of which she had not sued in that suit,) referred her to a suit for possession. The plaintiff then sued for possession :—*Held*, that the suit was not barred by § 7 of Act VIII. of 1859. DAKBO *v.* KESHO RAI.....**I. L. Rep. 2 All. 356, 1879, F. B.**

—— §§ 11, 12, 13—Transfer of Suit.

See **Petition for Leave to sue in forma Pauperis. 2.**

SKINNER *v.* ORDE...**L. Rep. 6 I. A. 126; I. L. Rep. 2 All. 241.**

—— § 12—Suit for Land in Sonthal Parganas—Sanction of High Court.

See **Sonthal Parganas.**

KALIPROSAD *v.* MEHER CHUNDRO... **I. L. Rep. 4 Cal. 222.**

—— § 15.

See the cases collected under **Declaratory Decree.**

—— § 26, Cl. 4 and 5—*Plaint—Estate bearing Name—Boundaries.*] Taking Cl. 4 and 5 of § 26 of Act VIII. of 1859 together, when a whole estate bearing a name is sued for, the boundaries need not be given. RAMDAYAL KHAN *v.* AJOODIA RAM KHAN.....**I. L. Rep. 2 Cal. 1.**

S. C. under **Amendment of Plaint. 2.**

—— § 30—Return of Plaint.

See **Jurisdiction. 19. 20.**

BAI MAKHOR *v.* BULAKHI...**I. L. Rep. 1 Bom. 538.**

KALU *v.* VISHRAM...**Ibid. 543.**

—— § 32.

See **Dues for Religious Services performed.**

TIRU KRISHNAMA CHARIAR *v.* KRISHNA SWAMI TATA CHARIAR...**L. Rep. 6 I. A. 190.**

CIVIL PROCEDURE CODE, ACT VIII. OF 1859—*contd.*

—— § 36—Appeal from Order fixing Court Fees on Plaints.

See **Court Fees. 5.**

NARAYAN *v.* COLLECTOR OF TANNA... **I. L. Rep. 2 Bom. 145.**

—— § 73—Abatement of Appeal—Death of Appellant—Right of Purchaser to carry on Appeal

See **Abatement of Appeal—Civil. 1.**

MORESHWAR *v.* KUSHABA...**I. L. Rep. 2 Bom. 248.**

—— § 73—Abuse—Defamation—Parties.

See **Parties to Suit. 6.**

SUBHAIYYAR *v.* KRISHNAYYAR... **1 L. Rep. 1 Mad. 383.**

—— § 73—Adding Parties.

See **Parties to Suit. 7.**

KOEGLER *v.* PROSSONNO...**I. L. Rep. 2 Cal. 472.**

—— §§ 92-93—Suit for Specific Performance of Contract to give in Marriage—Interim Injunction to restrain Breach will not be granted.

See **Injunction. 1.**

GUNPUT NARAIN SINGH.....**I. L. Rep. 1 Cal. 74.**

—— § 102.

See **Abatement of Appeal—Civil. 1.**

MORESHWAR *v.* KUSHHABA...**I. L. Rep. 2 Bom. 249.**

—— § 110—*Failure of Plaintiff to pay Court Fee for Issue of Summons—Non-Appearance of Defendants—Dismissal of Suit—Fresh Suit.*] Where the plaintiff failed to deposit the *talabana* required for the purpose of issuing summonses to certain persons whom it was proposed to make defendants in addition to the original defendants, and the Court on that ground irregularly dismissed the suit as against such original defendants before the day fixed for the hearing of the case, by an order purporting to be made under § 110 of Act VIII. of 1859 :—

Held, that such order of dismissal did not preclude the plaintiff from instituting a fresh suit against the original defendants. GULAB DAI *v.* JIWAN RAM. *Stuart*, C.J., and *Pearson*, J...**I. L. Rep. 2 All. 318, 1879.**

Digitized by Google

CIVIL PROCEDURE CODE, ACT VIII. OF 1859—*contd.*

—— § 119—Judgment *Ex-parte*—Written Statement rejected—Defendant's Pleader allowed to cross-examine Plaintiff's Witnesses.

See **Judgment Ex-parte. 3.**

RAGHAPA *v.* PARAPA...**I. L. Rep. 1 Bom. 217.**

—— § 119—Right of Respondent to Appeal from Judgment *ex-parte* in Appeal.

See **Appeal—Civil. 6.**

KALI KISHORE *v.* DHUNUNJOY...**I. L. Rep. 3 Cal. 228.**

1.——§ 119.—*Judgment* ex-parte—*Appeal.*] The provisions of § 119 of Act VIII. of 1859, "that no appeal shall lie from a judgment passed *ex-parte* against a defendant who has not appeared," must be understood to apply to the case of a defendant who has not appeared at all, and not to the case of a defendant who, having once appeared, fails to appear on a subsequent day to which the hearing of the cause has been adjourned. ZAIN-UL-ABDIN KHAN *v.* AHMAD RAZA KHAN...**I. L. Rep. 2 All. 67, 1878; L. Rep. 5 I. A. 233.**

2.—— § 119.—Ex-parte *Decree—Rehearing granted after Expiration of Time limited for Application.*] The plaintiff obtained an *ex-parte* decree on the 3rd July 1873, of which he took out execution on the 9th August 1873. On the 11th November 1873, the defendant applied for and obtained a rehearing under § 119 of Act VIII. of 1859. On the rehearing his suit was dismissed on the merits by both the lower Courts. On special appeal to the High Court:—

Held, that, although § 119 provides that an order for rehearing shall be final, it is final only in the sense that the order by itself is not open to appeal, and that the plaintiff was not precluded by that section, from raising, on special appeal, the objection that the order for rehearing was made after the time limited by that section, and therefore ought to be set aside as made without jurisdiction. RUNGLALL MISSER *v.* TOKHUN MISSER. *Ainslie* and *Birch*, JJ...**I. L. Rep. 2 Cal. 114, 1876.**

—— § 123.

See **Variance between Written Statement and Proofs.**

CHOVA KARA *v.* ISA KHALIFA...**I. L. Rep. 1 Bom. 209.**

CIVIL PROCEDURE CODE, ACT VIII. OF 1859—*contd.*

—— §§ 139 and 141.

See **Amendment of Plaint. 2.**

RAM DAYAL *v.* AJOODHIA RAM...**I. L. Rep. 2 Cal. 1.**

—— § 148—*Adjournment—Dismissal of Suit.*] In a suit issues having been settled, the final hearing of the suit was adjourned to a fixed date for disposal. On that date the plaintiff did not appear, and the suit was dismissed under § 148 of Act VIII. of 1859:—

Held, that as this was not a case which had been adjourned in favour of either party to enable him to "produce his proofs or cause the attendance of his witnesses," the order was not one which could properly be made. RYALL *v.* SHERMAN. *Morgan*, C. J., and *Innes*, J.....**I. L. Rep. 1 Mad. 287, 1877.**

—— § 170.

See **Res Judicata. 17.**

BRAMMOYE DASSEE *v.* KRISTO MOHUN...**I. L. Rep. 2 Cal. 222.**

—— § 181.

See **Account. 2.**

WATSON *v.* AGA MEHEDEE SHERAZEE...**L. Rep. 1 I. A. 346.**

See **Practice—Civil. 2.**

SETH GUJMULL *v.* MUSST. CHABEE. **I. L. Rep. 2 I. A. 34.**

—— § 194—Decree payable by Instalments—Discretion.

See **Decree payable by Instalments. 1. 2.**

BINDO PERSAD *v.* MADHO PERSAD. **I. L. Rep. 2 All. 129.**

CARVALHO *v.* NURBIBI...**I. L. Rep. 3 Bom. 202.**

—— § 194—Interest from Date of Suit—Award of—Discretion.

See **Interest. 7.**

CARVALHO *v.* NURBIBI...**I. L. Rep. 3 Bom. 202.**

—— § 197—*Suit for Possession—Decree—Application for Assessment of Mesne Profits—Order—Execution—Limitation.*] The plaintiff obtained, on the 31st January 1860, a decree for possession of certain property and mesne profits. Execution was taken out in 1863, and possession obtained, and a portion of the interest realized on the 6th March 1863. On the 3rd March 1866,

Digitized by Google

CIVIL PROCEDURE CODE, ACT VIII. OF 1859—*contd.*

the plaintiff applied to the Court to determine the amount due to him as mesne profits, the question having been reserved, under § 197 of Act VIII. of 1859, in the original decree. An inquiry having been held, the judgment-debtor (the defendant) objected to the assessment proposed. These objections were disposed of by the first Court on the 29th of June 1869, and the order of that Court was confirmed on appeal on the 31st August 1871. On the 24th August 1874, the plaintiff applied to the Court to realize the amount due to him as mesne profits, and the defendant objected that the application was out of time:—

Held, that when a decree is made under § 197 of Act VIII. of 1859, proceedings taken after the original decree for possession for the purpose of determining the amount of mesne profits payable to the plaintiff, are in effect proceedings in continuance of the original suit, and that until those proceedings are brought to a close and a declaration has been made as to the amount actually due, no decree for any specific sum can be said to exist.

The wording of § 197 of Act VIII. of 1859 is perfectly consistent with the view, that where the inquiry as to the amount of mesne profits is reserved, the decree for the possession of land is only a partial decree in the suit, and that there is to be a further inquiry, and a further decree in respect of mesne profits. The words "for the execution of the decree" refer only to the execution of the decree for the land, and cannot refer to execution of that which has not yet taken the form of a decree.

Musst. Fuseetun v. *Syud Keramut Hossein* (21 W. Rep. 242) and *Bunsee Singh* v. *Mirsa Nusuf Ali Beg* (22 W. Rep. 328) approved. DILDAR HOSSEIN v. MUJEEDUNNISSA. *Ainslie* and *Wilson*, JJ..... **I. L. Rep. 4 Cal. 629, 1878.**

—— § 200.

See **Restitution of Conjugal Rights. 1.**

YAMUNABAI v. PENDSE .....**I. L. Rep. 1. Bom. 164.**

—— § 200—*Decree for the Performance of a particular Act—Execution of Decree.*] *A.*, who had been directed by a decree to refrain from preventing her daughter returning to her husband, after the date of the decree permitted her daughter, who was of age, to reside in her house, but there was no evidence that there had been any interference on the part of *A.* with the return of her daughter to her husband since the date of the decree:—*Held*, that something more must be shown than that *A.*'s daughter was permitted to reside with *A.* to justify the execution of the decree against her under the provisions of § 200 of Act VIII. of 1859. AJNASI KUAR v. SURAJ PRASAD. *Stuart*, C. J., and *Turner*, J...**I. L. Rep. 1 All. 501, 1877.**

—— § 201—Arrest under *Ex-parte* Decree—Judgment-Debtor possessed of Property—Malice—Want of Reasonable and Probable Cause.

See **Damages. 4.**

RAJ CHUNDER v. SHAMA SOONDERI...**I. L. Rep. 4 Cal. 583.**

—— § 207—Application by Mooktiar on behalf of Judgment-Creditors.

See **Execution of Decree. 2.**

ANTO MISREE v. BIDHOOMOOKHEE DABEE. **I. L. Rep. 4 Cal. 605.**

—— § 208—Application by alleged Purchaser of Decree for Execution—Appeal.

See **Act XXIII. of 1861, § 11. 1.**

SOBHA BIBEE v. MIRZA SAKHAMUT ALI...**I. L. Rep. 3 Cal. 371.**

—— § 208—Execution of Decree—Transferree of Decree—Question of Legitimacy of Son of Deceased Decree-holder—Jurisdiction—Act XXIII. of 1861, § 11.

See **Execution of Decree. 9.**

ABREDOONISSA v. AMEEROONISSA... **L. Rep. 4 I. A. 66; I. L. Rep. 2 Cal. 327.**

—— § 208—Purchaser of Decree, Application by to execute—Appeal.

See **Appeal—Civil. 9.**

RUNJIT SINGH v. MEHERBAN KOER. **I. L. Rep. 3 Cal. 662.**

—— § 208—*Execution of Decree—Transfer of Decree by Operation of Law—Certificate to collect Debts—Act XXVII. of 1860.*] The obtaining of a certificate to collect debts, under Act XXVII. of 1860, is not indispensable to the competency of an heir of a deceased person to apply for execution, under § 208 of Act VIII. of 1859, of a decree held by such deceased person. But it is open to the Court in the exercise of its discre-

Digitized by Google

CIVIL PROCEDURE CODE, ACT VIII. OF 1859—*contd.*

tion, if there is any doubt that the person applying for execution, is entitled by inheritance to the rights decreed, to refuse the application until a certificate has been obtained. KARAM ALI *v.* HALIMA. *Turner*, C.J. (Offg.), and *Pearson*, J.....**I. L. Rep. 1 All. 686, 1878.**

—— §§ 235, 236, 237—Attachment of *Malikana* Rights payable for ever.

See **Execution of Decree. 10.**

NILKUNTO *v.* HURRO SOONDEREE... **I. L. Rep. 3 Cal. 414.**

1.——§ 240.—*Attachment of Land—Private Alienation after Attachment—Act VIII. of* 1859, § 235.] Certain land was, in execution of a decree ordered, by the Court executing the decree, to be attached. The written order required by § 235 of Act VIII. of 1859 issued, but it was not made known as directed by § 239 of that Act. It was not fixed up at all in the Court-house of the Court executing the decree, nor was it sent to, or posted up in, the office of the Collector of the district in which the land was situated. Subsequently to this attachment the plaintiff purchased the land from the judgment-debtor:—

Held, that as the attachment had not been made known as required by law, the provisions of § 240, Act VIII. of 1859, did not apply, and that the sale was not null and void. *Indra Chandra* v. *The Agra and Masterman's Bank* (10 W. Rep. 264, S. C. 1 Beng. L. Rep. S. N. xx.) followed. NUR AHMAD *v.* ALTAF ALI. *Pearson* and *Turner*, JJ.....**I. L. Rep. 2 All. 58, 1878.**

2. —— § 240.—*Alienation of Property under Attachment.*] The property in suit was attached in May 1871 in execution of a money-decree held by the defendant against *A*. In July 1871, the execution case was struck off the file by the Court executing the decree. In August 1873, the defendant again applied for execution of his decree by attachment and sale of the property. On the 12th of September 1873, notice was issued to the judgment-debtor under § 216 of Act VIII. of 1859. On the 17th of September 1873 the judgment-debtor sold the property to the plaintiff, and on the 28th of November 1873 the Court ordered the property to be attached in execution of the defendant's decree against *A*. In a suit brought by the plaintiff to establish her right to the property:—

CIVIL PROCEDURE CODE, ACT VIII. OF 1859—*contd.*

Held, that the alienation to the plaintiff was not void under the provisions of § 240 of Act VIII. of 1859, as there was no subsisting attachment of the property at the time of his purchase; and the object and intention of the orders in the former proceeding must be given effect to, which was the principle of the decision in *Ahmud Hossein Khan* v. *Mahomed Aseem Khan* (H. C. Rep. N. W. P., 1869, p. 51). ZAIB-UN-NISSA *v.* JAIRAM GIR. *Spankie* and *Oldfield*, JJ.....**I. L. Rep. 1 All. 616, 1878.**

—— § 243—Power of Manager appointed by the Court.

See **Mortgage. 22.**

MORAN *v.* MITTER BIBEE...**I. L. Rep. 2 Cal. 58.**

1. —— § 243. — *Decree on Mortgage — Manager.*] Section 243 of Act VIII. of 1859 does not apply to a decree founded on a mortgage, when the decree declares that certain property is to be sold in satisfaction of the mortgage debt. A manager, therefore, cannot be appointed under § 243 in such a case. WOMDA KHANUM *v.* RAJROOP KOER. *Ainslie* and *Kennedy*, JJ...**I. L. Rep. 3 Cal. 335, 1877.**

—— § 246—Order disallowing Claim to Attached Property—Suit to set aside, and for Declaration of Title—Court Fees.

See **Court Fees. 1.**

GULZARI MAL *v.* JADAUN RAI...**I. L. Rep. 2 All. 63.**

—— § 246—Order Refusing to release from Attachment Property ordered to be sold in Execution—Suit to establish Title—Limitation.

See **Limitation. 52.**

KOYLASH CHUNDER *v.* PREONATH. **I. L. Rep. 4 Cal. 610; 3 Cal. Rep. 23.**

—— § 246—Suit to Establish Right—Court Fees.

See **Court Fees. 11.**

CHUNIA *v.* RAMDIAL...**I. L. Rep. 1 All. 360.**

1. —— § 246.— *Adjudication of Right—Effect of—Limitation—Suit to establish Right.*] The share of a judgment-debtor in certain land being attached in execution of a decree against him, one *R*. claiming the whole of the property attached, appeared as an objector under § 246 of

Digitized by Google

CIVIL PROCEDURE CODE, ACT VIII. OF 1859—*contd.*

Act VIII. of 1859, but his claim was disallowed, and the property adjudged to be in the possession of the judgment-debtor. The property was put up for sale and purchased by the plaintiff. Subsequently, *R.*'s alleged right in the whole of the same property was attached in execution of another decree and purchased at a Court sale by the defendants, who were put in possession. Neither *R.* nor the defendants took any proceedings to set aside the order dismissing *R.*'s claim under § 246 of Act VIII. of 1859. In a suit brought by the plaintiff four years after the date of that order to establish his right to the property as the auction purchaser thereof:—

Held by a majority of the full Bench, that when an inquiry has been duly held under § 246 of Act VIII. of 1859, and an order passed thereon, so long as the order remains unquestioned by the procedure directed by that Act, it is as final and conclusive on all persons who are parties to it, as any other final order or decree of a Court of Justice. Until it has been overruled in a regular suit, brought in virtue of the permission expressly given by the Code, no Court is at liberty afterwards to go behind the order and inquire whether the Court, which disallowed the objection, had correctly appreciated the evidence as to possession, or had come to the conclusion erroneously, that possession was with the judgment-debtor. The effect of the order cannot be affected by the propriety, or otherwise, of the decision at which the Court, which investigated the claim, arrived as to the fact of possession. That order until reversed is conclusive of the right. *R.*, therefore, and the defendants having failed to prove the right of *R.* within the time allowed by § 246 of Act VIII. of 1859, such right could not now be set up.

By *Pearson*, J.—The finding of the Court under § 246 of Act VIII. of 1859 is an adjudication of proprietary right on the basis of possession. The order which may be passed on such finding is declared not to be subject to appeal, and would not be contestable at all, but for the express permission given by the concluding words of that section, to the party against whom an order may be given, to bring a suit to establish his right. Those words show that the matter in dispute between the decree-holder and the claimant is not by reason of the finding and order under § 246 so absolutely *res judicata*, as not to be

CIVIL PROCEDURE CODE, ACT VIII. OF 1859—*contd.*

open to re-adjudication in a suit by the party against whom the order was passed, to establish his right. But in the event of no such suit being brought, the matter in dispute must be held to have been finally disposed of by the finding and order under § 246, and to be absolutely a *res judicata*. BADRI PRASAD *v.* MUHAMMAD YUSUF.....**I. L. Rep. 1 All. 381, 1877.**

2. —— § 246.—*Effect of Order under —Suit to establish Right—Limitation.*] *B.* caused a certain dwelling-house to be attached in execution of a decree held by him against *M.*, as the property of *M.* *J.* preferred a claim to the property, which was disallowed by an order made under § 246 of Act VIII. of 1859. Two days after the date of such order, *M.* satisfied *B.*'s decree. More than a year after the date of this order, *J.* sued *B.* and *M.* to establish her proprietary right to the dwelling-house, alleging that *M.* had fraudulently mortgaged it to *B.*

Held, following *Badri Prasad* v. *Muhammad Yusuf* (I. L. Rep. 1 All. 381), that the suit was barred, no suit having been instituted by the plaintiff within one year from the date of the order under § 246, to establish her right, and it made no difference that the decree was settled after the order was made. YEONI *v.* BHAGWAN SAHAI. *Spankie and Oldfield*, JJ. ...**I. L. Rep. 1 All. 541, 1878.**

3. —— § 246.—*Judgment-Debtor—Limitation.*] When the judgment-debtor is not made a party to a proceeding under § 246 of Act VIII. he is not bound by the law of limitation to sue to establish his right to the property within one year from an order made under that section releasing it from attachment. IMBICHI KOYA *v.* KAKKUMAT UPPAKI. *Morgan*, C.J., and *Innes*, J.....**I. L. Rep. 1 Mad. 391, 1878.**

—— § 248—Land paying Revenue—Remission of Revenue for Term of Years.

See **Sale in Execution of Decree. 8.**

SHOWERS *v.* SETH GOBIND DASS .. **I. L. Rep. 1 All. 400.**

—— § 249 — Government Revenue — Error in Statement of—Waiver.

See **Sale in Execution of Decree. 18.**

GIRDHARI *v* HURDEO.....**L. Rep. 3 I. A. 230.**

Digitized by Google

CIVIL PROCEDURE CODE, ACT VIII. OF 1859—*contd.*

—— § 249—Material Irregularity.

See **Sale in Execution of Decree, 11.**

SHIB PROKASH *v.* SARDAR DOYAL... **I. L. Rep. 3 Cal. 544.**

—— § 249—Postponing Sale—Fresh Proclamation.

See **Sale in Execution of Decree. 6.**

GOOPEE NATH *v.* ROY LUCHMEPUT...**I. L. Rep. 3 Cal. 542.**

—— § 254.

See **Resale in Execution of Decree.**

ANANDRAV *v.* SHEKH BABA...**I. L. Rep. 2 Bom. 562.**

—— § 254—Appeal from Order under.

See **Appeal—Civil. 17.**

RAM DIAL *v.* RAM DAS.....**I. L. Rep. 1 All. 181.**

—— §§ 256, 257.

See **Sale in Execution of Decree. 16.**

THE COURT OF WARDS *v.* GAYA PERSAD.....**I. L. Rep. 2 All. 107.**

—— §§ 256, 257—*Act XXIII. of* 1861, § 11—*Auction Sale, Order cancelling—Suit to set aside.*] A Munsiff having cancelled an auction sale of lands on the sole objection of the judgment-debtor that the property realized a low price, and the Judge having dismissed an appeal by the auction purchaser against such order, on the ground that though the Munsiff's order was invalid, yet inasmuch as it was passed under § 11 of Act XXIII. of 1861, and not under § 257 of Act VIII. of 1859, under which the Munsiff assumed to act, no appeal would lie on the part of an auction purchaser who was no party to the decree in execution :—

Held, that such order passed by the Munsiff was not a proceeding under § 11 of Act XXIII. of 1861, but was an order passed *ultra vires* under § 257 of Act VIII. of 1859, and that a suit would lie for its cancelment, the finality of an order under §§ 256, 257 of Act VIII. of 1859 depending on its compliance with the terms of those sections. SUKHAI *v.* DARYAL. *Spankie* and *Oldfield*, JJ.....**I. L. Rep. 1 All. 374, 1877.**

CIVIL PROCEDURE CODE, ACT VIII. OF 1859—*contd.*

—— § 257.

See **Sale in Execution of Decree. 2.**

GHAZI *v.* KADIR BAKSH.....**I. L. Rep. 1 All. 212.**

—— § 258—Express Warranty of Judgment-Debtor's Title.

See **Sheriff's Sale. 4.**

BEJANJI *v.* HORMASJI...**I. L. Rep. 2 Bom. 259.**

1.—— § 260.—*Suit by a Certified Purchaser.*] Section 260 of Act VIII. of 1859 must be construed strictly and literally, and is applicable only to a suit brought against the certified purchaser to assert the *benamee* title against him; and the real owner for whom the purchase is made, if in possession, and if that possession has been honestly obtained, may defend a suit brought by the holder of the certificate, and show that he was the apparent owner only, and a mere trustee. LOKHEE NARAIN ROY CHOWDRY *v.* KALYPUDDO BANDOPADHYA...**L. Rep. 2 I. A. 154; 22 W. R. 358, 1875.**

2.—— § 260.—*Execution of Decree—Certified Purchaser.*] *A.* sued for a declaration that *P.*, the certified auction purchaser of certain immovable property, was merely a trustee for *R.*, *A.*'s judgment-debtor, that the purchase in *P.*'s name was made with the intent of defeating or delaying him in the execution of his decree, and that he was at liberty to apply for execution against the property as the property of his judgment-debtor :—

Held, following *Sohun Lall* v. *Gya Parshad* (H. C. Rep. N. W. P., 1874, p. 265), that § 260 of Act VIII. of 1859 was in no way a bar to the suit. PURAN MAL *v.* ALI KHAN. *Turner* and *Spankie*, JJ.....**I. L. Rep. 1 All. 235, 1876.**

3.—— § 260.—*Certified Purchaser.*] Section 260 of Act VIII. of 1859 must be construed literally and applied strictly. The Court will not apply it so as to assist the certified purchaser to enforce his claim against the party in possession, by relieving him from the necessity of showing the justice of his claim, or excluding inquiry as to its fraudulent character.

In a suit brought by the certified purchaser at an execution sale, to establish his right to the property and for possession :—

Digitized by Google

CIVIL PROCEDURE CODE, ACT VIII. OF 1859—*contd.*

Held, that the defendant was not precluded by § 260 of Act VIII. of 1859 from showing that he was the actual purchaser of the property. JAN MUHAMMAD *v.* ILAHI BAKSH. *Stuart*, C.J., and *Oldfield*, J.....**I. L. Rep. 1 All. 290, 1876.**

—— § 269—Dispossession of Third Person under Execution Sale—Obstruction to Purchaser.

See **Sale in Execution of Decree. 12.**

HARASATOOLLAH *v.* BROJONATH GHOSE.....**I. L. Rep. 3 Cal. 729**

—— § 269—*Possession—Undivided Hindu Family—Sale of Interest of one Coparcener.*] When the defendant is in possession in virtue of an order under § 269 of Act VIII. of 1859, the plaintiff can only succeed on the strength of his own title.

K. and *R.*, two out of five undivided Hindu brothers, sued *V.*, a purchaser at an execution sale of the interest of one of the brothers other than *K.* and *R.*, for the recovery of certain land which *V.* had obtained possession of under § 269 of Act VIII. of 1859. The lower Courts awarded two-fifths of the land to *K.* and *R.*, as being the amount of their share in the land.

Held, that the decree could not be maintained as *K.* and *R.*, being two of several coparceners in undivided property, could not say that they were entitled to a specific share in any portion of that property. They might have sued for a general partition, or for a decree declaring them entitled to possession jointly with *V.*

Such possession decreed, following *Babaji v. Vasadev* (I. L. Rep. 1 Bom. 95).

A purchaser at a Court's sale ought not to be put in exclusive possession of the whole undivided land by virtue of a decree against one coparcener only. KALAPA GIRMALLAPA *v.* VENKATESH VINAYAK. *Melvill* and *Kemball*, JJ...**I. L. Rep. 2 Bom. 670, 1878.**

—— § 270.

See **Execution of Decree. 7.**

NARANDAS *v.* BAI MANCHHA...**I. L. Rep. 3 Bom. 217.**

—— § 271.

See **Sale in Execution of Decree. 14.**

MANIK SINGH *v.* PARAS RAM...**I. L. Rep. 1 All. 727.**

CIVIL PROCEDURE CODE, ACT VIII. OF 1859—*contd.*

—— §§ 270 and 271—*First and Subsequent Mortgagees—Rateable Distribution of Sale Proceeds.*] The purport of §§ 270 and 271 of Act VIII. of 1859 (with which § 295 of Act X. of 1877 corresponds) is not to alter or limit the rights of parties arising out of a contract but simply to determine questions between rival decree-holders standing on the same footing, and in respect of whom there is no rule for otherwise determining the mode in which proceeds of property sold in execution shall be distributed. HASOON ARRA BEGUM *v.* JAWADOONISSA SATOODA KHANDAN...**I. L. Rep. 4 Cal. 29.**

—— § 285—Application under—is an Application to enforce or keep in force a Decree.

See **Limitation. 77.**

HUSSAIN BAKSH *v.* MADGE...**I. L. Rep. 1 All. 525.**

—— §§ 285, 286—Power of Court to which Decree transferred for Execution to give Certificate under.

See **Execution of Decree. 12.**

SHIB NARAIN *v.* BEPIN BEHARI... **I. L. Rep. 3 Cal. 512.**

—— § 287.

See **Execution of Decree. 24.**

JAGJIVAN NANABHOY...**I. L. Rep. 1 Bom. 82.**

—— § 299—Unsuccessful Application for Leave to sue *in formâ Pauperis* not a Demand by Way of Action.

See **Mahomedan Law—Dower. 1.**

RANEE KHAJOOROONISSA *v.* RANEE RYEESOONISSA...**L. Rep. 2 I. A. 235.**

—— § 308—Unsuccessful Application for Leave to sue *in formâ Pauperis* not a Demand by Way of Action.

See **Mahomedan Law—Dower. 1.**

RANEE KHAJOOROONISSA *v.* RANEE RYEESOONISSA...**L. Rep. 2 I. A. 235.**

—— §§ 308-310—Petition to sue *in formâ Pauperis* is a Plaint from the Date on which it is filed, though Court Fees subsequently paid, if no Fraud of Plaintiff.

See **Petition for Leave to sue in forma Pauperis. 2.**

Digitized by Google

CIVIL PROCEDURE CODE, ACT VIII. OF 1859—*contd.*

SKINNER *v.* ORDE...**L. Rep. 6 I. A. 126; I. L. Rep. 2 All. 241.**

See CHUNDER MOHUN ROY *v.* BHUBON MOHINI DABEA...**I. L. Rep. 2 Cal. 399.**

Under **Limitation. 37.**

—— § 309—Pauper Suit—Court Fees—Sale in Execution—Distribution of Proceeds—Prerogative of Crown.

See **Prerogative of the Crown.**

COLLECTOR OF MORODABAD *v.* MUHAMAD DAIM KHAN...**I. L. Rep. 2 All. 196.**

1.—— § 309. *Court Fees—Prerogative of the Crown.*] The Crown has the first claim to the proceeds of a pauper suit, to the extent of the amount of the Court fees that would have been payable at the institution of the suit, had the plaintiff not been a pauper.

Section 309 of Act VIII. of 1859 does not preclude the Crown, or its representative, from urging its prerogative, and insisting on its right of precedence. It is a universal rule that prerogative, and the advantages it affords, cannot be taken away except by the consent of the Crown, embodied in a statute. This rule of interpretation is well established, and applies not only to Statutes passed by the British, but also to Acts of the Indian Legislature. GANPAT PUTAYA *v.* THE COLLECTOR OF KANARA. *West* and *N. Harridas*, JJ.....**I. L. Rep. 1 Bom. 7, 1875.**

2.—— § 309. *Pauper Suit—Court Fees—Attachment in Execution of Decree—Prerogative of the Crown.*] The plaintiff was allowed to sue the defendants *in formâ pauperis*. His suit was dismissed, and on appeal, the decree of the Court of first instance was confirmed with costs. The defendants applied to recover, in execution of these decrees, the costs incurred by them, and certain houses belonging to the plaintiff were accordingly attached, and sold:—

Held, that the Crown was entitled to be paid first out of the proceeds of such sale the amount of the Court fees which the plaintiff would have had to pay if he had not been allowed to sue *in formâ pauperis*. The principle of the ruling in *Gunput Putaya* v. *The Collector of Kanara* (I. L. Rep. 1 Bom. 7) followed. GULZARI LAL *v.* THE COLLECTOR OF BAREILLY. *Pearson* and *Spankie*, JJ.....**I. L. Rep. 1 All. 596, 1878.**

CIVIL PROCEDURE CODE, ACT VIII. OF 1859—*contd.*

—— §§ 323, 324—Remission of Award not Illegal on its Face, for Reconsideration with reference to Opinions of Pandits as to Hindu Law applicable.

See **Arbitration. 8.**

KANAK CHAND *v.* RAM NARRAYAN. **I. L. Rep. 2 All. 181.**

—— § 325—Refusal to confirm Award—Appeal.

See **Appeal—Civil. 34.**

HOWARD *v.* WILSON... **I. L. Rep. 4 Cal. 231.**

—— §§ 325-327—Validity and Finality of Award—Appeal.

See **Arbitration. 4.**

BOONJAD NATHOO *v.* NATHOO SHAHOO...**I. L. Rep. 3 Cal. 875.**

—— § 327—Application to file Award—Jurisdiction.

See **Suit for Land. 3.**

KELLIE *v.* FRASER...**I. L. Rep. 2 Cal. 445.**

—— § 327—Award, Judgment according to—Appeal.

See **Arbitration. 6.**

VISHNU *v.* RAVJI.....**I. L. Rep. 3 Bom. 18.**

—— Denial of Arbitration Proceedings.

See **Arbitration. 5.**

HUSSAIN *v.* MOHINI...**I. L. Rep. 1 All. 156.**

—— Misconduct of Arbitrators.

See **Arbitration. 7.**

CHOWDHRY MURTUZA *v.* MUSST. BIBI.....**L. R. 3 I. A. 209.**

—— § 337—*Decree on Appeal.*) The Court of appeal has power, under § 337 of Act VIII. of 1859 (corresponding with § 544 of Act X. of 1877) to draw up what would be a fair decree as regards all the parties to a suit, though some of them may not have appealed. JOYKISTO COWAR v. NITTYANUND NUNDY. *Garth*, C.J., *Markby* and *Mitter*, JJ...**I. L. Rep. 3 Cal. 738; 2 Cal. Rep. 440, 1878.**

S. C. under **Hindu Law—Ancestral Trade.**

Digitized by Google

CIVIL PROCEDURE CODE, ACT VIII. OF 1859—*contd.*

——§ 338.

See **Stay of Execution.**

In the matter of the Petition of HARSHANKAR PARSAD.....**I. L. Rep. 1. All. 178.**

See **Sureties.**

APPAJI *v.* SHIVLAL ...**I. L. Rep. 3 Bom. 204.**

——§ 338—*Stay of Execution pending Appeal—Sureties—Extent of Liability*] *S.* obtained a decree against *B.* in the Court of the Subordinate Judge of Poona. *B.* appealed to the District Court, and pending such appeal *S.* applied for execution. *B.* prayed for its stay, and execution was accordingly stayed, upon *A.* and *V.* becoming securities, under § 338 of Act VIII. of 1859, "for the due performance of the decree or order of the Appellate Court," and executing a bond whereby they bound themselves to "obey and fulfil all such orders and decrees as might be given against the said defendant *B.* in such appeal," and in default of *B.* so doing, "to pay jointly and severally, at the order of the said Court, all such sums as the said Court should, to the extent of Rs. 812-8-0, adjudge" against them. The decree of the Subordinate Judge was reversed in appeal, but in special appeal the decree of the lower Appellate Court was reversed, and the cause remanded for further trial, which resulted in the District Court confirming the original decree of the Subordinate Judge:—*Held* (*Pinhey*, J., *diss.*), that the obligation of the sureties to fulfil the decree of the Appellate Court was not confined to the first decree of that Court, which reversed the decree of the Subordinate Judge on which execution had been applied for, but extended to the final decree which it passed on remand by the High Court in special appeal. SHIVLALL KHUBCHAND *v.* APPAJI BHIVRAO. *Kemball* and *Pinhey*, JJ.....**I. L. Rep. 2 Bom. 654, 1878.**

——§ 342—Security for Costs—Enforcing Bond against Surety in Execution proceedings.

See **Security Bond.**

CHUTTERDHAREE LAL *v.* RAMBELASHEE KOER...**I. L Rep. 3 Cal. 318.**

——§ 348.

See **Pauper Respondent.**

BABAJI *v.* BALLAL ... **I. L. Rep. 1 Bom. 75.**

CIVIL PROCEDURE CODE, ACT VIII. OF 1859—*contd.*

—— § 350—Error not affecting Merits—Improper Admission of Unstamped Document.

See **Error not affecting the Merits.**

AFZAL-UN NISSA *v.* TEJ BAN ...**I. L. Rep. 1 All. 725.**

—— § 354—*Remand—Objections.*] Where an Appellate Court under § 354 of Act VIII. of 1859, refers issues to a lower Court for trial, and fixes a time within which, after the return of the finding, either party to the appeal may file a memorandum of objections to the same, neither party is entitled without the leave of the Court, to take any objection to the finding, either orally or otherwise, after the expiry of the period so fixed, without his having filed such memorandum. RATAN SINGH *v.* WAZIR...**I. L. Rep. 1 All. 165, 1876, F. B.**

—— § 364—Application for Execution of Decree by alleged Purchaser.

See **Act XXIII. of 1861, § 11. 1.**

SOBHA BIBEE *v.* MIRZA SAKHAMUT ALI...**I. L. Rep. 3 Cal. 371.**

—— §§ 367 to 371—Continuation *in formâ Pauperis* of Suit commenced in ordinary Form.

See **Suit in forma Pauperis.**

NIRMUL CHANDRA *v.* DOYAL NATH. **I. L. Rep. 2 Cal. 130.**

—— § 372—Special Appeal in Rent Suit under Rs. 100.

See **Appeal—Civil. 32.**

LUNGESSUR KOOER *v.* SOOKHA OJHA.....**I. L. Rep. 3 Cal. 151.**

—— §§ 376 to 378.

See the cases collected under **Review.**

And *see* **Practice—Privy Council. 8.**

MEER REEASUT *v.* HADJEE ABDOOLLAH.....**L. Rep. 1 I. A. 72.**

—— § 386—District—Southal Parganas.

See **Sonthal Parganas.**

KALIPROSHAD RAI *v.* MEHER CHANDRO ROY...**I. L. Rep. 4 Cal. 222.**

CIVIL PROCEDURE CODE, ACT X. OF 1877—§ 2—"Decree"—Order passed in Execution—Appeal.

See **Appeal—Civil. 26.**

THAKUR PRASAD *v.* AHSAN ALI... **I. L. Rep. 1 All. 668.**

Digitized by Google

CIVIL PROCEDURE CODE, ACT X. OF 1877—*contd.*

—— § 2—"Decree"—Order in Execution.

See **Appeal—Civil. 23.**

MURLI DHAR *v.* PURSOTAMDAS... **I. L. Rep. 2 All. 91.**

—— § 2—"Decree"—Order in Execution of Decree—Appeal.

See **Appeal—Civil. 28.**

UDA BEGAM *v.* IMAM-UD-DIN...**I. L. Rep. 2 All. 74.**

—— § 2—"Decree" — Order of Reference to Commissioner for taking Accounts.

See § 3, *post.*

RUSTOMJI *v.* KESSOWJI.....**I. L. Rep. 3 Bom. 161.**

—— § 2—Decree—Order rejecting Petition for Leave to sue as Pauper.

See **Appeal—Civil. 18.**

COLLIS *v.* MANOHAR DAS ..**I. L. Rep. 1 All. 745.**

—— § 2—Decree—Order refusing to set aside *Ex-parte* Decree.

See **Appeal—Civil. 2. 19.**

GULAB SINGH *v.* LACHMAN DAS... **I. L. Rep. 1 All. 748.**

LUKMIDAS *v.* EBRAHIM ..**I. L. Rep. 2 Bom. 644.**

—— § 2——*Judicial Proceeding.*] In the definition of the term "decree" in § 2 of the Civil Procedure Code (Act X. of 1877), the expression "suit or other judicial proceeding" must be understood to mean a suit, or other judicial proceeding of the same nature as a suit. The definition limits the term "decree" to a "formal order in which the result of the decision is embodied," and this indicates that it applies only to those orders which the law requires to be drawn up after a decision has been recorded in a particular formal manner, *i.e.*, to those orders, or their like, which are described as decrees, and of which the form is given in § 206 of the Code; *e.g.*, orders under §§ 333, 522, 526, and 531. DALPATBAI BHAGUBHAI *v.* AMARSANG KHEMABAI. *Melvill* and *Kemball*, JJ ..... **I. L. Rep. 2. Bom. 553, 1878.**

—— § 3.

See **Appeal—Civil. 26. 28.**

THAKUR PRASAD *v.* AHSAN ALI... **I. L. Rep. 1 All. 668.**

UDA BEGAM *v.* IMAM-UD-DIN...**I. L. Rep. 2 All. 74.**

CIVIL PROCEDURE CODE, ACT X. OF 1877—*contd.*

—— § 3—"Decree."

See **Appeal—Civil. 9.**

RUNJIT SINGH *v.* MEHERBAN KOER. **I. L. Rep. 3 Cal. 662.**

—— § 3—*Practice and Procedure in Suits pending at the date of the Enactment of Act X. of* 1877 *—Power of Commissoner for taking accounts to grant Certificates—Appeal from Decision of Commissioner—Decree.*] The effect of the proviso in § 3 of the Civil Procedure Code (Act X. of 1877) taken in connection with the definition of the word "decree" in § 2 is, that, in all pending suits down to their final result, *i.e.*, when nothing remains to be done but to execute the decree or to appeal from it, the practice and procedure which would have been followed apart from the new Code, are to be observed; but that for purposes of all subsequent proceedings in execution of the decree, or in appeal from it, the new Code is to apply.

The word "decree" in § 3 of that Code means a decree final in its nature, and not an order of an interlocutory nature, such as an order of reference to take accounts, though such an order in a general way may be properly termed a decree, and, therefore, a suit which has been referred by the Court to the Commissioner to take accounts is still in a stage "prior to decree" within the meaning of § 3 of the Civil Procedure Code (Act X. of 1877). RUSTOMJI BURJORJI *v.* KESSOWJI NAIK. *Green*, J.....**I. L. Rep. 3 Bom. 161, 1878.**

S. C. under **Accounts. 3.**

—— § 5 — *Jurisdiction — Insolvency — Small Cause Court.*] The effect of § 5 of the Civil Procedure Code (Act X. of 1877), coupled with the 2nd Schedule to that Act, is to render the whole of Chapter XX. of the Code, including § 360, inapplicable to Courts of Small Causes in the Mofussil, notwithstanding the words "any Court other than a District Court," and "any Court situate in his district," which occur in that section. Consequently, the Government Resolution, No. 2133, of 3rd April 1878, investing the Judge of the Court of Small Causes at Ahmedabad with powers, under the said chapter, to adjudicate in insolvency matters, is *ultra vires* and invalid. SALLU GANESH *v* RANCHOD KAHANDAS. *Westropp*, C.J., and *Kemball*, J... **I. L. Rep. 2 Bom. 641, 1878.**

Digitized by Google

CIVIL PROCEDURE CODE, ACT X. OF 1877—*contd.*

—— § 13—Former Judgments and Decrees.

See **Evidence. 1.**

NARANJI BHIKUBHAI *v.* DIPA UMED. **I. L. Rep. 3 Bom. 3.**

—— § 28.

See **Misjoinder of Causes of Action.**

JANOKINATH *v.* RAMRUNJUN...**I. L. Rep. 4 Cal. 949.**

—— § 29—Section 29 of the Civil Procedure Code (Act X. of 1877) permits the joinder of the Drawer and Acceptor of a bill of exchange in a suit by the holder. PESTONJEE EDULJEE GUZDUR *v.* MIRZA MAHOMED ALLY. *Pontifex*, J.... **I. L. Rep. 3 Cal. 541, 1878.**

—— § 31.

See **Misjoinder of Causes of Action.**

JANOKINATH *v.* RAMRUNJUN...**I. L. Rep. 4 Cal. 949.**

—— § 32.

See **Appeal—Civil. 22.**

GOPAL SINGH *v.* DULAR KUAR ..**I. L. Rep. 2 All. 352.**

1. —— § 32.—*Practice—Joinder of Parties.*] The defendants purchased from one *P. E.* a cargo of rice at Chandbally of three different qualities according to sample. The defendants then telegraphed to the plaintiff an offer to sell him a cargo of rice at Chandbally by description; and that offer was accepted by telegram. The defendants afterwards sent the plaintiff samples of the rice comprised in the cargo which were not objected to by the plaintiff as differing from the description under which the rice had been sold by telegram; but on the arrival of the cargo the plaintiff complained that the bulk did not correspond with the sample, and instituted a suit for damages on that ground against the defendants. On an application by the defendants, under § 32 of the Civil Procedure Code (Act X. of 1877), to add their vendor, *P. E.*, as a defendant to the suit;—*Held*, refusing the application, that though it would be a great saving of expense and would prevent further litigation if *P. E.* were added as a party, yet that the language of § 32 did not apply to the case; as the Court could not say that the plaintiff *ought* to have joined *P. E.* as a defendant, or that *P. E.*'s presence was *necessary* to enable the Court effectually and completely to adjudicate, and settle the question involved in the suit between the plaintiff and defendants. MAHOMED BADSHA *v.* NICOL, FLEMING & CO. *Pontifex*, J...**I. L. Rep. 4 Cal. 355; 2 Cal. Rep. 330, 1878.**

2. —— § 32.—*Adding Parties—Suit by one of two Mortgagees, Lessors, for Rent—Act XVIII. of 1873, § 106.*] *B.* and *N.*, joint mortgagees of the shares of the defendants in an undivided estate, granted the mortgagors a lease of the property, by the terms of which the mortgagors were to pay the mortgagees a certain half-yearly rent on account of the right they held in equal shares, and it was provided that in case of default the mortgagees might bring a suit and realize the amount due. Default having been made in the payment of rent, and *N.* having refused to join in a suit against the mortgagors to recover it, *B.* sued them alone, for a moiety of the rent due. The Revenue Court of first instance dismissed the suit, on the ground that *B.* could not sue alone. On appeal, the Judge considering that, as *B.* could get no redress unless the Court exercised its power under § 32 of Act X. of 1877, remanded the case in order that the plaint might be amended by adding *N.* as a defendant:—

Held, that such order was not illegal, though the provisions of § 32 of Act X of 1877 were not made applicable to the procedure of the Revenue Courts. *Per Spankie*, J., that if § 106 of Act XVIII. of 1873 applied to the case, the plaintiff should be instructed to sue for the entire share due, making the co-mortgagee a co-defendant; but that that section did not in any way operate as a bar to the suit. The property referred to in that section is an undivided landed estate, and the co-sharer is the co-sharer in that estate, which was still the property of the mortgagors. And though the mortgagee represented the mortgagors as being in temporary proprietary possession of the property, yet it was not in the character of a co-sharer in an undivided property that the plaintiff brought this suit. The terms of the lease showed that the equal shares of the mortgagees in the mortgage, were recognized by the mortgagors; and there was a recognition by the lessees that, under the terms of the mortgage deed, the plaintiff was entitled to half the sum payable under the lease, and on that account the plaintiff was entitled to sue for his share of it,

Digitized by Google

CIVIL PROCEDURE CODE, ACT X. OF 1877—*contd.*

though it might be more strictly regular that he should sue for the whole sum due, making his co-mortgagee a defendant. SHIB GOPAL *v.* BALDEO SAHAI. *Pearson* and *Spankie*, JJ.....**I. L. Rep. 2 All. 264, 1879.**

—— § 45.

See **Misjoinder of Causes of Action.**

JANOKINATH *v.* RAMRUNJUN...**I. L. Rep. 4 Cal. 949.**

—— § 57, Cl. *c*.—Appeal from Order—Returning Plaint after Issues filed.

See **Appeal--Civil. 23.**

ABDUL SAMAD *v.* RAJINDRO KISHOR SINGH...**I. L. Rep. 2 All. 357.**

—— § 83—*Substituted Service of Summons—Setting aside* Ex-parte *Decree*.] Substituted service of a summons on a defendant is made by § 83 of the Civil Procedure Code (Act X. of 1877) as effectual as personal service, merely for proceeding with the suit, and nothing more. The section does not make service on a defendant's house in Bombay equivalent to personal service on that date. When substituted service of the summons is ordered, under § 82 of the Code, a sufficient time must be allowed, under § 84 for notice of the fact to reach the defendant, wherever he may be; and if an *ex-parte* decree be obtained by the plaintiff, the Court, on being satisfied that the time fixed was insufficient, will set aside the decree. MIRZA ALI BEBANEE *v.* SYED HYDER HOSSEIN. *Pinhey*, J...**I. L. Rep. 2 Bom. 449, 1878.**

—— § 111—Set-off — Unliquidated Damages cannot be.

See **Set-off. 2.**

RAGHU NATH *v.* ASHRAF HUSAIN. **I. L. Rep. 2 All. 252.**

—— § 130—Discretion to refuse Inspection—Privileged Communications.

See **Inspection. 2.**

WALLACE & Co. *v.* JEFFERSON... **I. L. Rep. 2 Bom. 453.**

—— § 203 — Heir Representative — Deceased Mahomedan — Absentee Heir —Consent Decree—Sale in Execution.

See **Mahomedan Law. 1.**

ASSAMATHEM NESSA *v.* ROY LUTCHMEPUT.....**I. L. Rep. 4 Cal. 142.**

CIVIL PROCEDURE CODE, ACT X. OF 1877—*contd.*

—— § 206—Decree—what it should contain.

See **Decree.**

THAMMAN SINGH *v.* GANGA RAM. **I. L. Rep. 2 All. 342.**

HARSUKH *v.* MEGHRAJ...**Ibid. 345.**

—— § 210.

See **Decree payable by Instalments. 1.**

BINDA PRASAD *v.* MADHO PRASAD. **I. L. Rep. 2 All. 129.**

—— § 210—*Suit on Bond charging Immoveable Property—Decree payable by Instalments*.] The provisions of § 210 of Act X. of 1877 are not applicable to a suit for the recovery of the amount of a bond debt by the sale of the property hypothecated by such bond.

In such a suit, therefore, the Court cannot direct that the amount of the decree should be payable by instalments. HURDEO DAS *v.* HUKAM SINGH. *Stuart*, C. J. and *Pearson*, J...**I. L. Rep. 2 All. 320, 1879.**

—— § 223—*Court of Small Causes—Act X. of* 1877, § 648.] Section 223 of the Civil Procedure Code does not apply to Courts of Small Causes. Section 648 of the same Code does not apply to case in which the defendant resides within the same district in which the Court issuing the warrant is situate.

Therefore, a Court of Small Causes may issue a warrant for the arrest of a person residing in another district, but not if he resides within the same district in which the Court is situated, but without its local jurisdiction. CHUNILAL SOBHARAM *v.* PARBHUDAS KURSANDAS. *Melvill* and *Kemball*, JJ..... **I. L. Rep. 2 Bom. 560, 1878.**

—— § 230.

See **Application for Execution of a Decree.**

BYRADDI SUBBAREDI *v* DASAPPA RAU.....**I. L. Rep. 1 Mad. 403.**

1. —— § 230—*Execution of Decree—"Last Preceding Application."*] *Held*, that the words "last preceding application" in the 3rd clause of § 230 of Act X. of 1877, mean an application under that section, and not an application under Act VIII. of 1859. RAM KISHEN *v.* SEDHU. *Spankie* and *Oldfield*, JJ.....**I. L. Rep. 2 All. 275, 1879.**

Digitized by Google

CIVIL PROCEDURE CODE, ACT X. OF 1877—*contd.*

2.—— § 230.—*Execution of Decree—Limitation.*] The concluding clause of § 230 of Act X. of 1877 refers to the question of limitation, and not to that of diligence. Where, therefore, the decree-holder had not on the last preceding application under § 230 of Act X. of 1877 used due diligence to procure complete satisfaction of the decree, and Act X. of 1877 had not been in force three years:—

Held, that the provisions of the third clause of § 230 of Act X. of 1877 were applicable to a subsequent application under that section. SOBHAN LAL *v.* KARIM BAKSH. *Pearson* and *Spankie*, JJ.....**I. L. Rep. 2 All. 281, 1879.**

—— § 244—Execution of Decree—Appeal.

See **Appeal—Civil. 23. 28.**

MURLI DHAR *v.* PARSOTAM DASS... **I. L. Rep. 2 All. 91.**

UDA BEGAM *v.* IMAM-UD-DIN.. **I. L. Rep. 2 All. 74.**

See § 588, *post.*

SURYAPRASAKA *v.* VAISYA SANNYASIV...**I. L. Rep. 1 Mad. 401.**

—— § 244—Moneys unduly realized in Execution—Recovery of.

See **Execution of Decree. 6.**

PARTAB SINGH *v.* BENI RAM...**I. L. Rep. 2 All. 61.**

—— § 244—*Appeal from Order—Execution of Decree—Judicial Proceedings—Act X.* of 1872, § 588.] An order made under § 244 of the Civil Procedure Code (Act X. of 1877), determining questions between the parties to a suit as to the amount of the mesne profits recovered by the plaintiff subsequently to the decree, and as to the amount payable on account of the execution of that decree, is not appealable, under § 588, Cl. *j*, not being of the same nature with "appealable orders made in the course of a suit." The "appealable orders made in the course of a suit" must be taken to be the orders mentioned in the other clauses of § 588 as appealable, and they are generally interlocutory orders, not going to the merits of any question arising in the suit. DALPATBHAI BHAGUBHAI *v.* AMARSANG KHEMABHAI. *Melvill* and *Kemball*, JJ...**I. L. Rep. 2 Bom. 553, 1878.**

—— § 246—Cross-Decrees.

See **Execution of Decree. 3.**

MURLI DHAR *v.* PURSOTAM DASS... **I. L. Rep. 2 All. 91.**

CIVIL PROCEDURE CODE, ACT X. OF 1877—*contd.*

—— § 252—Representative Heir—Deceased Mahomedan — Consent Decree — Absentee Heir—Sale in Execution.

See **Mahomedan Law. 1.**

ASSAMATHEM NESSA *v.* ROY LUTCHMEPUT.....**I. L. Rep. 4 Cal. 142.**

—— § 268—*Court of Small Causes—Attachment and Sale of Bond.*] Under the provisions of § 268 of the Civil Procedure Code (Act X. of 1877), bonds cannot be sold till the end of six months from the date of their attachment.

A Small Cause Court cannot appoint a receiver. Bonds, therefore, on which recovery will become time-barred before the date on which a sale can legally be made, cannot be available for the satisfaction of the judgment-creditor's debt. NURSINGDAS RUGHUNATHDAS *v.* TULSIRAM DAULATRAM.....**I. L. Rep. 2 Bom. 558.**

—— § 271—Breaking open Shop Door in Execution of Decree.

See **Breaking open Doors.**

DAMODAR *v.* ISHWAR...**I. L. Rep. 3 Bom. 89.**

—— § 273—*Execution of Decree — Attachment and Sale of Decree for Money.*] Although debts are mentioned in the category of property liable to attachment and sale in execution of a decree in § 166 of Act X. of 1877, yet it is apparent from the provisions of § 273 of the Act that the sale of a money-decree is not contemplated as the result of its attachment, and that an attachment in the mode therein ordained cannot lead to a sale.

The last clause of § 273 applies to other than money decrees.

Where two decrees for money, although they were not passed by the same Court, were being executed by the same Court:—

Held, that the provisions of the 1st Clause of § 273 were applicable on principle. SULTAN KUAR *v.* GULZARI LAL. *Pearson* and *Oldfield*, JJ.....**I. L. Rep. 2 All. 290, 1879.**

—— § 283—*Small Cause Court—Jurisdiction—Act XI.* of 1865, § 12.] A suit brought by a defeated claimant under § 283 of Act X. of 1877 to establish his right to, and recover possession of, certain moveable property attached in execution of a decree of a Small Cause Court, is within the jurisdiction of, and must therefore, under

Digitized by Google

CIVIL PROCEDURE CODE, ACT X. OF 1877—*contd.*

Act XI. of 1865, § 12, be instituted in a Small Cause Court. GORDHAN PEMA *v.* KASANDAS BALMUKANDAS. *Melvill* and *Kemball*, JJ. **I. L. Rep. 3 Bom. 179, 1879.**

—— § 295.

See **Execution of Decree. 7.**

NARANDAS *v.* BAI MANCHHA...**I. L. Rep. 3 Bom. 217.**

—— §§ 311, 312.

See **Appeal—Civil. 22.**

GOPAL SINGH *v.* DULAR KUAR... **I. L. Rep. 2 All. 352.**

—— § 315—*Act VIII. of* 1859—*Sale in Execution of Decree under Act VIII. of* 1859—*Eviction of Purchaser—Refund of Purchase-Money.*] In September 1877, certain immoveable property was sold in execution of a decree under the provisions of Act VIII. of 1859. The auction purchaser was subsequently, after Act X. of 1877 came into operation, deprived of the property on the ground that the judgment-debtor had no saleable interest therein. He thereupon applied under § 315 of Act X. of 1877 to the Court executing the Decree, for the refund of his purchase-money, and the Court made the order, holding that § 315 of Act X. of 1877 applied :—

Held, that the order was a right, just and proper one. The proceedings commenced under Act VIII. of 1859 appeared to have terminated with the sale. The application under § 315 of Act X. of 1877 might be regarded as a new proceeding ; and the Court was not prepared to say that the Judge could not entertain the application under the second clause of that section, and therefore declined to interfere.

In the matter of the Petition of MULO. *Pearson* and *Spankie*, JJ...**I. L. Rep. 2 All. 299, 1879.**

Dissented from in HIRA LALL *v.* KARIMUN-NESSA ..... **I. L. Rep. 2 All. 780.**
See **Vol. 2, Col. 1310.**

—— § 332—*Execution of Decree—Resistance to Execution—Mortgagee in Possesion.*] A mortgagee who is in possession of the mortgaged property under the mortgage, is in possession " on his own account " within the meaning of § 332 of Act X. of 1877.

In pursuance of an order made in execution of a decree passed before Act X. of 1877 came into force, the mortgagees in possession of the mortgaged property under the mortgage, were dispossessed thereof after Act X. of 1877 came into force. On an application by the mortgagees under § 332 of Act X. of 1877 to be restored to possession of such property :—*Held*, that they were entitled to the benefit of that section.

A person claiming under § 332 of Act X. of 1877 need not prove his title, but only the fact of possession. SHAFI-UD-DIN *v.* LOCHAN SINGH. *Turner* and *Spankie*, JJ...**I. L. Rep. 2 All. 94, 1878.**

—— § 336, Cl. 5—*Small Cause Court—Debtor.*] Clause 5 of § 336 of Act X. of 1877 applies to Small Cause Court debtors; such persons can obtain the benefit of Chapter XX. of that Act by applying to a Court which has jurisdiction under that Chapter. SYED MOIDIN *v.* SUNDARAMUTRA. *Morgan*, C. J., and *Forbes*, J.....**I. L. Rep. 2 Mad. 9, 1878.**

—— §§ 341, 342. Imprisonment for Contempt.

See **Imprisonment for Contempt.**

MARTIN *v.* LAWRENCE...**I. L. Rep. 4 Cal. 655.**

—— § 342—*Act VIII. of* 1859, §§ 273 *to* 281—*Act X. of* 1877, §§ 3, 228 *to* 243—*Act I. of* 1868, § 6—*Construction—Procedure—Retrospective Enactment—Discharge from Custody.*] *Held*, by a majority of the Full Bench (*Sargent* and *Bayley*, JJ., dissenting). that a judgment-debtor, imprisoned in satisfaction of a decree against him under Act VIII. of 1859, is not entitled, under Act X. of 1877, to be released on the coming into operation of the latter Act, if he have then been imprisoned for more than six months but less than two years.

Per Westropp, C.J.:—The judgment-creditor had, under Act VIII. of 1859, a right, on the condition of regularly paying the subsistence money in the order of committal directed to be paid, to have the judgment debtor detained in custody for two years, if he did not in the meantime fully satisfy the decree. The language of Chapter XIX. of the new Civil Procedure Code (Act X. of 1877) is purely prospective, *i.e.*, deals with the future only, and does not touch any proceedings already taken in execution of decrees. Sub-division I. of that Chapter is essentially prospective throughout, and § 342 must be considered to relate to future imprison-

Digitized by Google

CIVIL PROCEDURE CODE, ACT X. OF 1877—*contd.*

ment consequent on arrests to be made under Act X. of 1877. There is no trace in Chapter XIX. of any intention on the part of the Legislature to deal with imprisonment commenced before the new Code came into force.

The committal under the old Code, while yet in force, of a judgment debtor by a Judge towards satisfaction of a decree against that judgment debtor, being a *thing done* under that Code, is clearly within the language and meaning of, and saved by, the General Clauses' Act (I. of 1868), § 6, notwithstanding the repeal of the old Code, under which that thing was done; and if the continued detention of that judgment debtor is to be regarded as procedure, that detention, having commenced before the new Code, which repealed the old Code, came into force, is expressly saved by the General Clauses' Act, and cannot be governed by the new Code. The effect of Act I. of 1868, § 6, and Act X. of 1877, § 3, is to remove from the scope of the latter Code such proceedings (after dceree) as had been initiated before and were pending when the new Code came into force, and to leave within its range all proceedings (after decree) initiated subsequently to its coming into force, even though the suits in which such last-mentioned proceedings may be taken be suits which were commenced, and the decree itself made, before the new Code came into operation.

Therefore, even supposing the rule laid down in *Wright* v. *Hale* (6 H. & N. 227), as to the retrospective effect of enactments relating to procedure, to apply, still § 342 of Act X. of 1877 is not retrospective. To give to such an enactment as § 342 of that Act a retrospective construction, would be no mere alteration of procedure, but a distinct deprivation of a right to keep the debtor in prison for two years, subject to such application as he might make under the Insolvent Debtors' Act, or §§ 280 and 281 of the old Civil Procedure Code. And, in the absence of express direction or unmistakable implication to the contrary in the law itself, the presumption is that a statute depriving the subject of a vested right is not retrospective. Though it may be that this presumption does not exist where a statute is remedial and merely alters procedure, yet if the change of procedure when sought to be applied retrospectively be complicated by the divestment of a pre-existing right, the presumption against such intention revives in its full strength.

CIVIL PROCEDURE CODE, ACT X. OF 1877—*contd.*

Per Sargent, J.:—The effect of §§ 1 and 3 of Act X. of 1877 and § 6 of Act I. of 1858 is that, whilst saving all acts already done in execution of a decree in a suit instituted before Act X. of 1877 came into force, all matters of procedure in execution subsequent to that date must be determined by the Act itself. The question before the Court was one of procedure. The writ of imprisonment is by its very nature continuous in its operation, and the conditions and period under and for which it remains in force and activity, are as much matters relating to procedure, as the issuing of the writ itself. Neither the words of § 342, nor of the heading to Chapter XIX. of Act X. of 1877, necessarily confine the imprisonment there referred to, to imprisonment commenced since the Act came into operation. Though the judgment creditor by the attachment of his debtor's property, as well as by the arrest and imprisonment of his debtor, acquires a right of a very distinct and specific nature, and different from the mere right of a plaintiff to have his cause of action tried according to a certain procedure, yet the rule that an Act is not to be so construed as to defeat an existing right, is only a rule of construction, and must yield to the intention of the Legislature. That intention may be gathered with sufficient certainty from §§ 1 and 3 of Act X. of 1877, coupled with the strong presumption which arises from the nature of the change in the law; for it is difficult to suppose that the Legislature, when introducing a most important and benign change in the law of debtor and creditor, in harmony with modern legislation, could have intended that the two laws should continue for the next two years to operate concurrently, and that debtors who were imprisoned on the day previous to that on which the Act came into force, should be liable to be detained under the severer enactment

Per Bayley, J.:—Formerly in England, and in Bombay until the Supreme Court was abolished in 1862, the power of a judgment creditor to keep his judgment debtor in prison lasted until the latter paid or tendered the amount directed to be levied, or unless he was released under the provisions of the Indian Insolvent Act. This power of detention of the judgment debtor

Digitized by Google

CIVIL PROCEDURE CODE, ACT X. OF 1877—*contd.*

in prison was limited by Act VIII. of 1859 to two years, by § 280 of that Act. Further limits on that were placed by §§ 273 and 280, and the case of *Coombe* v. *Caw* (13 Beng. L. Rep. 268, 22 Cal. W. Rep., Civ. Rul. 257) is inconsistent with the inviolable right claimed for the judgment creditor to detain his judgment debtor in prison for two years.

The sections of Act VIII. of 1859 relating to imprisonment in execution of a decree and its duration relate to procedure alone.

To describe the power, which the execution creditor in India has had in the Presidency Towns since 1862, of putting and keeping his judgment debtor in prison, as an inviolable *right*, or anything equivalent to it, is fallacious. The definitions of "decree" and "judgment debtor" in Act X. of 1877 are sufficiently wide to embrace decrees passed, and judgment debtors who have become such, before 1st October 1877, when that Act came into force. Sections 341 and 342 of Act X. of 1877 are applicable to proceedings pending when that Act came into operation. The Legislature intended the improvements which are in the new Code to apply to suits brought under the old Code in those cases in which, consistently with the provisions of the new Code, they might, upon the ordinary principles of the interpretation of statutes, be clearly applicable. Section 3 of Act X. of 1877 implies that the procedure after a decree, in a suit instituted before the Act came into force, shall be according to the provisions of Act X. of 1877, and the present application must therefore be regulated by that Act. Act I. of 1868, § 6, does not apply to the present case.

When of two possible constructions, one is in strict harmony with the improvements contained in the Act, and is not merely not inconsistent with the plain grammatical language used, but follows the provisions and directions therein contained, as well as the benign spirit of modern legislation on the subject of imprisonment for debt, and, moreover, prevents a grave injustice being inflicted upon the civil prisoners already in custody in British India when the Act came into operation, while the other construction treats the point under consideration as not having been considered by the Legislature at all, the former construction should be adopted.

CIVIL PROCEDURE CODE, ACT X. OF 1877—*contd.*

Per Green, J. :—Apart from § 1 and the proviso to § 3 of Act X. of 1877, there is no provision in that Act as to its operation with regard to pending or past proceedings.

Section 1 does not alter or abridge the legal effect, after the 1st October 1877, of proceedings had and finally determined under Acts VIII. of 1859 and XXIII. of 1861, before the new Code came into operation; and in construing § 3, regard must be had to Act I. of 1868, § 6, though the general rule of construction in the last-mentioned section must yield to the intention of the Legislature expressed in any subsequent Act, that to a greater or less extent that rule is not to apply to such subsequent Act; and in the proviso to § 3 of Act X. of 1877, coupled with § 1 of that Act, is to be gathered the intention of the Legislature that, to a certain extent at least, such rule was not to apply so far as concerned the repeal of the previous procedure laws effected by § 3. Ample effect would be given to the proviso, and to such intention, while at the same time regard would be had to § 6 of Act I. of 1868, by holding that in all *future—i. e.*, future with reference to 1st October 1877—steps and proceedings, not being prior to decrees in suits instituted and appeals presented before 1st October 1877, the provisions of the new Code are to be observed and operative. The cases as to the restropective effect of statutes relating to procedure all deal with the question whether, where some new step is taken in the course of pending proceedings after the new statute came into operation, and on which new step being taken the new statute has imposed some restraint or conferred some benefit on one or other party to the proceeding, such restraint or benefit is not to have effect, and they do not involve this, that a statute concerned with judicial procedure, though affecting pending suits as to all future proceedings in such suits, interferes with or affects steps and proceedings already, at the time such statute came into operation, taken and determined. In the present case, no new proceeding had been taken, or was necessary to be taken, to detain the petitioners in custody under warrants issued by virtue of Act VIII. of 1859. The right of the execution creditors to detain their debtors in custody till satisfaction of the decree, (but not exceeding the period of two years,) is a right having relation to property, and is not to

Digitized by Google

CIVIL PROCEDURE CODE, ACT X. OF 1877—*contd.*

be taken away, except by the clearly expressed will of the Legislature, and is in no way affected by Act X. of 1877.

Per West, J.:—A legal relation between the parties concerned is equally constituted by a judicial order as by their own agreement. The judicial transaction, consisting in any inquiry and an order of the Court under a particular law, is a matter as to which that law, though repealed, still has full effect. The decision ascertains or creates a legal right, which must afterwards be guarded in the unfolding and outgrowth of all its regular consequences. Act VIII. of 1859 must have clothed the Court's orders with an abiding validity, the judgment creditor with an abiding right, or else with none at all. The ministerial officer is to act on the order of the Court according to its original purport, and the jurisdiction under which it was issued. The order itself, in the absence of an express provision to the contrary, retains its validity until it is withdrawn or varied; and the new procedure, therefore, does not apply, except perhaps in matters of mere administration, or provisional arrangement, whether as touching person or property. It cannot apply, so as to annul an order properly made, a relation legally constituted, and thus deprive the creditor of his right once acquired by the arrest of his judgment debtor in execution. Any change in the relations of the parties can be made only in accordance with the latter and existing law; but their previously subsisting relations continue to exist as before. It is unlikely that the Legislature intended the limiting provision of § 342 of Act X. of 1877 to be applied to cases of imprisonment other than those arising under the Code itself. As a simply negative provision, § 342, *by itself*, would have no effect, but the affirmative provisions with which it is to be read are found in the same chapter, and they can only be applied to cases arising after the Act came into force, and thus the limiting provision (§ 342) would itself be limited. Had the change in the maximum of imprisonment been from six months to two years, it could not have been contended that debtors already in jail might be detained there eighteen months longer, under the new Code, than the old one allowed. The close of the litigious transaction, like that of a contractual one, fixes the rights of the parties according to the then existing law, and in principle there is no distinction between a construction of a new law, prejudicial to the debtor, and one prejudicial to the creditor. The imprisonment under Act VIII. of 1859 as a "proceeding commenced," comes within § 6 of Act I. of 1868, and would therefore not be affected by the rules in Act X. of 1877, even if there had been no provision in that Code as to matters still pending. Therefore, Act VIII. of 1859, and not Act X. of 1877, governed the enforcement, or attempt to enforce the judgment creditor's decree throughout the proceedings consequent on his application for the debtor's imprisonment. Under Act VIII. of 1859 the applicants were not entitled to be released, and their applications should therefore be rejected. If the present application for discharge be a proceeding commenced since the new Act came into force, it is not integral with the previous proceedings in execution, and therefore cannot affect the law by which they must be governed. If, on the other hand, it is integral with them, it is part of a proceeding commenced before the new Act came into force. In neither case can it bring within the new Act, orders deriving their validity and effect from another law. *In the matter of the Petition of* RATTANSI KALIANJI.....**I. L. Rep. 2 Bom. 148, 1877.**

CIVIL PROCEDURE CODE, ACT X. OF 1877—*contd.*

—— §§ 344, 345, 351—*Insolvency*—Onus Probandi —*Appeal.*] A person applying under § 344 of Act X. of 1877 must satisfy the Court that his case comes within the provisions of § 351, and the burden of proof lies upon him. An order dismissing such an application is appealable under § 588 (n). MUMTAZ HOSSEIN *v.* BRIJ MOHUN THAKOOR. *Jackson* and *McDonnell*, JJ.....**I. L. Rep. 4 Cal. 888, 1878.**

—— Chapter XX.

See **Jurisdiction. 9.**

ABDOOL HAMED...**I. L. Rep. 4 Cal. 94.**

—— § 360—Inapplicable to Small Cause Court.

See § 5, *ante.*

LALLU *v.* RANCHOD...**I. L. Rep. 2 Bom. 641.**

—— § 380—*Residence —Practice — Security for Costs.*] The word "residence" may receive a larger or more restricted meaning according to what the Court believes the intention of the Legislature to have been in framing the particular provision in which the word is used. Section

Digitized by Google

382 of Act X. of 1877, shows the intention of the Legislature that the "residence" spoken of in § 380, should be residence under such circumstances as will afford reasonable probability that the plaintiff will be forthcoming when the suit is decided. Each case must, therefore, depend on its own particular circumstances. MAHOMED SHUFFLI *v.* LALDIN ABDULLA. *Sarjent*, J.....**I. L. Rep. 3 Bom. 227, 1878.**

—— §§ 394, 395.

See **Account. 3.**

RUSTOMJI *v.* KESSOWJI ... **I. L. Rep. 3 Bom. 161.**

—— § 407.

See **Appeal—Civil. 18.**

COLLIS *v.* MANOHAR DAS...**I. L. Rep. 1 All. 745.**

—— § 440—Suit by Mother as Guardian of Minor Sons—Certificate necessary.

See **Bombay Minors' Act XX. of 1864, § 2.**

MURLIDHAR *v.* SUPDU...**I. L. Rep. 3 Bom. 149.**

—— § 525—Subordinate Judge with Small Cause Powers.

See **Award.**

BALKRISHNA *v.* LAKSHMAN...**I. L. Rep. 3 Bom. 219.**

—— § 532—*Practice—Summary Suit on Promissory Note—Extending Time for Defendant to appear.*] Inasmuch as § 532 of Act X. of 1877 provides that the summons shall issue either in the form mentioned in the schedule, or in such other form as the High Court may from time to time direct, the High Court has power to extend the time within which a defendant in a suit brought under Chapter XXXIX. of the Civil Procedure Code (Act X. of 1877) can come in and obtain leave to defend. Where it appeared that the defendant was an officer stationed at Peshawar, the time for the defendant to obtain leave to appear and defend was extended to 28 days. GROOM *v.* WILSON. *Pontifex*, J....**I. L. Rep. 3 Cal. 539, 1878.**

—— § 539—*Devasthan* Property.

See **Right to Sue. 10.**

RADHABAI *v.* CHIMNAJI RAMJI SALI. **I. L. Rep. 3 Bom. 27.**

—— § 540.

See **Appeal—Civil. 9.**

RUNJIT SINGH *v.* MEHERBAN KOER. **I. L. Rep. 3 Cal. 662.**

—— § 540.

See **Appeal—Civil. 2.**

LAKHMIDAS *v.* EBRAHIM.....**I. L. Rep. 2 Bom. 644.**

—— § 544—Decree on Appeal.

See **Civil Procedure Code, Act VIII. of 1859, § 337.**

JOYKISTO *v.* NITTYANUND...**I. L. Rep. 3 Cal. 738.**

—— § 549.

See **Security for Costs. 1.**

HAIDRI BAI *v.* E. I. RY. CO.....**I. L. Rep. 1 All. 687.**

—— § 575.

See **Letters Patent — Bombay — 1865, Cl. 36.**

APPAJI *v.* SHIVLAL...**I. L. Rep. 3 Bom. 204.**

—— § 584—Appeal from Order returning Plaint for Presentation of Plaint to proper Court, made after Admission of Suit.

See **Appeal—Civil. 25.**

KALIAN DAS *v.* NAWAL SINGH... **I. L. Rep. 1 All. 620.**

—— § 584—Execution of Decree—Appeal from Order.

See **Appeal—Civil. 28.**

UDA BEGAM *v.* IMAM-UD-DIN... **I. L. Rep. 2 All. 74.**

—— § 588.

See **Appeal—Civil. 9.**

RUNJIT SINGH *v.* MEHERBAN KOER...**I. L. Rep. 3 Cal. 662.**

—— § 588—Appeal against an *Ex-parte* Decree and Order refusing to set the same aside.

See **Appeal—Civil. 2. 19.**

LAKHMIDASS *v.* EBRAHIM...**I. L. Rep. 2 Bom. 644.**

GULAB SINGH *v.* LACHMAN DAS... **I. L. Rep. 1 All. 748.**

—— § 588—Appeal from Order passed in Execution of Decree before Act X. of 1877 came into force

See **Appeal—Civil. 26.**

THAKUR PRASAD *v.* AHSAN ALI...**I. L. Rep. 1 All. 668.**

Digitized by Google

CIVIL PROCEDURE CODE, ACT X. OF 1877—*contd.*

—— § 588—Appeal from Order refusing Leave to sue *in formâ Pauperis*.

See **Appeal—Civil. 18.**

COLLIS *v.* MANOHAR DAS...**I. L. Rep. 1 All. 745.**

—— § 588—*Execution of Decree—Bond—Registration Act XX. of* 1866—*Appeal.*] An application was made to a District Munsiff, on the 16th July 1877, to issue execution on a decree dated 6th November 1869, obtained on a bond registered under § 53 of Act XX. of 1866. He made an order refusing the application, the decree being one passed not in a regular suit, but in a summary suit, and governed by the period of limitation prescribed by Article 166, Sched. II., Act IX. of 1871. On appeal the Subordinate Judge reversed the order of the Munsiff, holding that Article 167, Sched. II. of Act IX. of 1871 applied.

On application to the High Court—*Held*, that as § 588 of Act X. of 1877 provided that orders passed in appeal from orders under § 244 of that Act should be final, no second appeal lay.

Held also, that the High Court could not interfere, under § 622 of the Act, as the Subordinate Judge had jurisdiction to hear the appeal. SURYAPRASAKA RAU *v.* VAISYA SANNYASIRAZU. *Kernan* and *Muttusami Ayyar*, JJ...**I. L. Rep. 1 Mad. 401, 1878.**

—— § 588 (*e*)—Appeal from Order returning Plaint after Issues framed.

See **Appeal—Civil. 23.**

ABDUL SAMAD *v.* RAJINDRO...**I. L. Rep. 2 All. 357.**

—— § 588 (*j*)—Execution of Decree—Appeal from Order.

See ante, § 244.

See **Appeal—Civil. 23. 28.**

MURLI DHAR *v.* PURSOTUM DAS... **I. L. Rep. 2 All. 91.**

UDA BEGAM *v.* IMAM-UD-DIN...**I. L. Rep. 2 All. 74.**

—— § 588 (*m*).

See **Appeal—Civil. 22.**

GOPAL SINGH *v.* DULAR KUAR... **I. L. Rep. 2 All. 352.**

—— § 588 (*n*)—Appeal from Order refusing Application under § 344.

See § 344.

MUMTAZ HOSSEIN *v.* BRIJ MOHUN. **I. L Rep. 4 Cal. 888.**

CIVIL PROCEDURE CODE, ACT X. OF 1877—*contd.*

—— § 591—Appeal against an *Ex-parte* Decree and an Order refusing to set the same aside.

See **Appeal—Civil. 2. 19.**

LAKHMIDAS *v.* EBRAHIM.....**I. L. Rep. 2 Bom. 644.**

GULABH SINGH *v.* LACHMAN DAS... **I. L. Rep. 1 All. 748.**

—— § 622—Execution of Decree—Error in Law—Appeal.

See § 588, *ante*.

SURYAPRASAKA *v.* VAISYA SANNIYASI...**I. L Rep. 1 Mad. 401.**

—— § 647.

See **Appeal—Civil. 22.**

GOPAL SINGH *v.* DULAR KUAR... **I. L. Rep. 2 All. 352.**

—— § 647—Proceedings in Execution instituted before Act X. of 1877 came into force—Appeal.

See **Appeal—Civil. 26.**

THAKUR PRASAD *v.* AHSAN ALI... **I. L. Rep. 1 All. 668.**

—— § 648.

See **Execution of Decree. 21.**

BADAN BEBAJEA *v.* KALA CHAND BEBAJEA...**I. L. Rep. 4 Cal. 823.**

CLAIM AGAINST ESTATE OF INTESTATE FOR MONEY PAID AFTER HIS DEATH FOR THE SURVIVING MEMBERS OF HIS FAMILY.

See **Administration. 1.**

DANJIBHAI *v.* NAVAZBAI.....**I. L. Rep. 2 Bom. 75.**

CLAIMS TO IMMOVEABLE PROPERTY AGAINST EXECUTORS OR TRUSTEES.

See **Act XXVII. of 1860, § 2.**

TREEPOORASOONDERY *v.* DEBENDRONATH...**I. L. Rep. 2 Cal. 45.**

CLASS—Bequest to a—some of whom not in Existence at Testator's Death.

See **Hindu Law—Will. 4.**

KHERODEMONEY *v.* DOGRGAMONEY. **I. L. Rep. 4 Cal. 455.**

And *see* TREEPOORASOONDERY *v.* DEBENDRONATH...**I. L. Rep. 2 Cal. 45, p. 53.**

Under **Limitation. 38.**

Digitized by Google

CLASS—*contd.*

—— Bequest to a—Remoteness.

See **Hindu Law—Will. 7.**

SOUDAMONEY *v.* JOGESH CHUNDER. **I. L. Rep. 2 Cal. 262.**

—— Gift of Residue to a — Postponement of Period of Distribution—Act X. of 1865, §§ 98, 101, 102.

See **Will. 4. 5.**

MASEYK *v.* FERGUSSON.....**I. L. Rep. 4 Cal. 304, 670.**

CLAUSE IN WILL RESTRAINING PARTITION OR ENJOYMENT.

See **Hindu Law—Will. 1.**

MOKOONDO LALL *v.* GONESH CHUNDER...**I. L. Rep. 1 Cal. 104.**

CLOSE HOLIDAY—Limitation to Suit for Arrears of Rent expiring on—Presentation of Plaint next Court Day, too late.

See **Limitation. 13.**

PURRAN CHUNDER *v.* MUTTY LALL. **I. L. Rep. 4 Cal. 50.**

—— Limitation expiring on—Presentation of Plaint next Court Day.

See **Limitation. 6.**

BISHAN CHAND *v.* AHMAD KHAN. **I. L. Rep. 1 All. 263.**

COINAGE, CONVERSION OF.

See **Enhancement of Rent. 3.**

MEER MAHOMED HOSSAIN *v.* FORBES...**L. Rep. 2 I. A. 1.**

CO-INAMDARS.

Suit by one of two Co-Inamdars *to Eject a Tenant.*] One of two *co-inamdars*, even though he may be the manager of the *inam* estate, so as to bind his co-sharer by his acts, cannot maintain a suit to eject a tenant against the express wishes of his co-sharer. KRISHNARAV *v.* GOVIND. *Kemball* and *N. Harridas*, JJ.....**I. L. Rep. 3 Bom. 25, n., 1875.**

COLLECTION OR POSSESSION OF SALT EARTH.

See **Madras Reg. I. of 1805, § 18.**

REG. *v.* PYLA ATCHI...**I. L. Rep. 1 Mad. 278.**

COLLECTOR—Acts done by — in Official Capacity—Jurisdiction.

See **Jurisdiction. 18.**

GANGADHAR *v.* COLLECTOR OF AHMEDNAGAR...**I. L. Rep. 1 Bom. 628.**

COLLECTOR—*contd.*

—— Appointed to take Charge of the Estate of a Minor—Jurisdiction over.

See **Bombay Minors' Act XX. of 1864, §§ 11 and 15.**

NARSINGRAV *v.* LUXAMAN...**I. L. Rep. 1 Bom. 318.**

—— Report of.

See **Reports of Collectors.**

RAJAH MITTER *v.* PERIANAYAGUM. **L. Rep. 1 I. A. 209.**

COLLECTOR OF SEA CUSTOMS, MADRAS—Suit against—Jurisdiction.

See **Jurisdiction. 13.**

COLLECTOR OF SEA CUSTOMS, MADRAS, *v.* PANNIAR CHITHAMBARAM...**I. L. Rep. 1 Mad. 89.**

COLLUSIVE CONVEYANCE TO DEFEAT THE RIGHTS OF THIRD PERSONS—Denial by Grantee of Trust in Favour of Grantor—Right of Grantor to show the Nature of the Transaction.

See **Estoppel. 6.**

PARAM SINGH *v.* LALJI MAL...**I. L. Rep. 1 All. 403.**

COMMECENMENT OF PROSECUTION—A prosecution commences when the complaint is made, the reception of the complaint being a stage of the judicial proceedings towards a conviction. IMPX. *v.* LAKSHMAN HARI. and *Pinhey*, JJ...**I. L. Rep. 2 Bom. 481, 1877.**

S. C. under **Sanction to Prosecute. 4.**

COMMISSION—Awarded to Administrator General—Appeal from Order.

See **Administrator Generals' Act II. of 1874, § 27.**

SOMASUNDARAM CHETTI *v.* ADMINISTRATOR GENERAL...**I. L. Rep. 1 Mad. 148.**

—— Right to be examined on.

See **Pardanashin Female. 1.**

HURROO SOONDERY...**I. L. Rep. 4 Cal. 20.**

COMMISSION ON SALES—Compensation for Loss of Life—Agent of Company—Winding up—No implied Contract to continue Partnership at all risks (or Abandonment of Right to wind up), or to pay Compensation.

Digitized by Google

COMMISSION ON SALES—*contd.*

See **Compensation for Loss of Commission on Sales.**

LALBHAI *v.* KAVASJI...**8 Bom. H. C. Rep. O. C. J. 202; I. L. Rep. 1 Bom. 468; and L. Rep. 3 I. A. 200.**

COMMISSIONER FOR TAKING ACCOUNTS—Motion to discharge or vary Report of.

See **Practice—Civil. 7.**

SUMAR AHMED *v.* HAJI ISMAIL... **I. L. Rep. 1 Bom. 158.**

—— Power of—to Grant Certificate.

See **Account. 3.**

RUSTOMJI *v.* KESOWJI...**I. L. Rep. 3 Bom. 161.**

—— Reference to, Effect of.

See **Account. 2.**

WATSON *v.* AGA MEHEDEE SHERAZEE...**L. Rep. 1 I. A. 346.**

COMMISSIONER'S REPORT—Motion to discharge or vary.

See **Practice—Civil. 7.**

SUMAR AHMED *v.* HAJI ISMAIL... **I. L. Rep. 1 Bom. 158.**

COMMITTAL—After Charge drawn up.

See **Criminal Procedure Code, Act X. of 1872, §§ 220, 221.**

EMPRESS *v.* KUDRUTULLAH...**I. L. Rep. 3 Cal. 495; 2 Cal. Rep. 2.**

—— By Magistrate to whom Case referred for Enhancement of Punishment.

See **Criminal Procedure Code, Act X. of 1872, § 46.**

CHINNIMARIGADU...**I. L. Rep. 1 Mad. 289.**

COMMON—Right of.

See **Inamdar. 2.**

VISHVANATH *v.* MAHADAJI...**I. L. Rep. 2 Bom. 147.**

COMMON LAW RULES OF SUPREME COURT—Rule 149—Application by Attorney under.

See **Attorney and Client. 1.**

ABA ISHMAIL *v.* ABA THARA...**I. L. Rep. 1 Bom. 253.**

COMMUNICATION BY CLIENT TO HIS ATTORNEY IN PRESENCE OF THE OTHER SIDE.

See **Privileged Communication. 2.**

MEMON HAJEE HAROON MAHOMED *v.* MOLVI ABDUL KARIM. **I. L. Rep. 3 Bom. 91.**

COMPANY—Agreement to take Shares in.

See **Agreement to take Shares in a Company.**

ANANDJI VISRAM *v.* THE NARIAD S. AND W. Co...**I. L. Rep. 1 Bom. 320.**

—— Contributory.

See **Company—Winding up—Contributory.**

THE LONDON, BOMBAY, AND MEDITERRANEAN BANK *v.* BHANJI ZUTANI...**I. L. Rep. 2 Bom. 116.**

—— Directors — Powers of, to borrow and mortgage.

See **Powers of Directors to Borrow and Mortgage.**

IRVINE *v.* UNION BANK OF AUSTRALIA...**L. Rep. 4 I. A. 86; I. L. Rep. 3 Cal. 280.**

—— Directors—Ratification of particular Acts of Directors in Excess of Authority, not an Extension of Future Authority.

See **Powers of Directors to Borrow and Mortgage.**

IRVINE *v.* UNION BANK OF AUSTRALIA...**L. Rep. 4 I. A. 86; I. L. Rep. 3 Cal. 280.**

—— Illegal—Unregistered Association of more than twenty Artizans for purposes of Gain.

See **Company. 1.**

—— Memorandum of Association—Provision in Memorandum of Association of — empowering Subdivision of Shares.

See **Agreement to take Shares.**

ANANDJI VISRAM *v.* NARIAD S. & W. Co...**I. L. Rep. 1 Bom. 320.**

—— Memorandum of Association — Variance between Memorandum of Association and Prospectus.

See **Agreement to take Shares.**

ANANDJI VISRAM *v.* NARIAD S. & W. Co...**I. L. Rep. 1 Bom. 320.**

Digitized by Google

COMPANY—*contd.*

—— Power of Directors to bind—by Bill of Exchange.

See **Power of Directors to bind Company by Bill of Exchange.**

NEW FLEMING S. AND W. Co. (LIMITED).....**I. L. Rep. 3 Bom. 439.**

—— Powers of Directors to Borrow and Mortgage.

See **Powers of Directors to Borrow and Mortgage.**

IRVINE *v.* UNION BANK OF AUSTRALIA...**L. Rep. 4 I. A. 86; I. L. Rep. 3 Cal. 280.**

—— Ratification by—of particular Act of Directors in Excess of Authority, not an Extension of Future Authority.

See **Powers of Directors to Borrow and Mortgage.**

IRVINE *v.* UNION BANK OF AUSTRALIA...**L. Rep. 4 I. A. 86; I. L. Rep. 3 Cal. 280.**

—— Unregistered Association of more than twenty Artizans for purposes of Gain.

See **Company. 1.**

BHIKAJI *v.* BAPU...**I. L. Rep. 1 Bom. 550.**

—— Variance between Memorandum of Association and Prospectus.

See **Agreement to take Shares.**

ANANDJI VISRAM *v.* THE NARIAD S. AND W. Co...**I. L. Rep. 1 Bom. 320.**

——*Act X. of* 1866, § 4—*Association of Artisans—Illegal Agreement.*] An association of artizans for the purpose of enhancing the price of the work by bringing all the business of the trade into one shop, and dividing the price of the work done among the members according to their skill, is an association that has for its object the acquisition of gain, and, if consisting of more than twenty members, must be registered.

Where more than twenty artizans signed an agreement whereby they constituted themselves an association for the above purpose, but which association was not registered as a Company under Act X. of 1866:—

COMPANY—*contd.*

Held, that the Court could not grant an injunction to restrain the breach of such agreement. BHIKAJI SABAJI *v.* BAPU SAJI. *Sargent*, J..... .....**I. L. Rep. 1 Bom. 550, 1877.**

COMPANY—WINDING UP—Interest on Debts subsequently to Date of Winding-up Order.

See **Power of Directors to bind Company by Bill of Exchange.**

NEW FLEMING S. AND. W. Co. (LIMITED)...**I. L. Rep. 3 Bom. 437.**

1. ——*Transfer of Assets to New Company—Indian Companies' Act X. of* 1866, §§ 149, 154, *and* 175—*Right of Creditors of transferring Company—Dissentient Shareholder—Sanction of Court.*] By special resolutions passed on the 3rd July 1878, and confirmed on the 31st July 1878, the shareholders of the Fleming Spinning and Weaving Company (Limited) resolved that the company should be wound up voluntarily, and that all the assets of the said company should be transferred by the liquidators to a new company then intended shortly to be formed and registered in Bombay, called the New Fleming Spinning and Weaving Company (Limited), and that the liquidators should receive as the consideration for such transfer, certain fully paid-up shares in the new company for distribution among the shareholders of the old company. The said transfer was to be made subject to a covenant on the part of the new company to perform all the agreements and to discharge all the debts and liabilities of the old company. The new company was duly formed and registered on the same day (31st of July 1878), and the specified number of shares was delivered to the liquidators of the old company for distribution among the shareholders of the old company. Two of such shareholders, *J.* and *H.*, the holders of 50 and 20 shares respectively, dissented from the special resolutions in the manner required by § 175 of Act X. of 1866, and required the liquidators to purchase their interests. The matter was thereupon referred to arbitration. In the case of *H.* an award was made and filed, but further proceedings were stayed by the order of the Court. In the case of *J.* no award was made, and he brought a suit which was still pending, against the old and the new companies and the liquidators, to recover Rs. 75,000, the alleged value of his shares. In pur-

Digitized by Google

COMPANY—WINDING UP—*contd.*

suance of the resolution, the liquidators of the old company handed over the assets to the new company. They remained in its possession till the 17th of January 1879 when the new company was ordered to be wound up by the Court. The petitioners were appointed official liquidators, and as such were in possession of the assets at the date of the petition. No property whatever remained in the hands of the old company, except the shares remaining to be distributed among the dissentient shareholders. The new company had discharged debts of the old company to the extent of six laks of rupees, and there remained debts of over three laks due by the old company. Until after the new company became insolvent, no creditor of the old company had expressed his dissent from the above special resolution, or had refused to accept the new company as his debtor. On the 1st of March 1879, the voluntary winding up of the old company was directed to be continued as a winding up under the supervision of the Court. The official liquidators of the new company now presented a petition, praying that the above special resolutions might be sanctioned by the Court. Certain unsatisfied creditors of the old company opposed the petition, insisting that the sanction should not be granted except on the condition that they should be paid in full out of the property of the old company. The two dissentient shareholders, *H.* and *J.*, also objected to the sanction being given, unless provision were made for the satisfaction of their claims as soon as they could be ascertained :—

Held, that the sale and transfer of the business and property of the old company was not void *ab initio* by virtue of § 149 of Act X. of 1866 because the claims of creditors had not been previously satisfied or secured.

As to the considerations which ought to influence the Court in granting or refusing its sanction, it would not be prudent to attempt a more specific statement than is given by Lord Hatherley in *Re Agra and Masterman's Bank* (L. Rep. 12 Eq. 509, note), where he says :—"In truth, the function of the Court seems to be reduced to seeing that everything has been fairly done and put before the creditors and shareholders, and that they have been informed of all that they ought to be informed of ; that a decision has not been snatched by surprise ; that there has been nothing which would induce a Court to say that there had been either a fraud or

COMPANY—WINDING UP—*contd.*

surprise upon the person sought to be affected by it." Applying that principle, under the special circumstances of the case, the unpaid creditors could not successfully oppose the application for a sanction. Their course was to prove for their debts under the obligation assumed by the new company to satisfy the past debts and liabilities of the old company. The debts of the old company were not a specific charge on the property in the hands of the new company. By virtue of § 175 of Act X. of 1866, it was a condition of the resolution being binding on the dissentient shareholders *H.* and *J.*, that they should be paid the value of their interest in the business and property intended to be transferred.

Under the special circumstances of the case, the new company having taken the property and assumed all the liabilities of the old company, which would include the liability to purchase the interests of dissenting shareholders, there being no laches in those dissenting shareholders (*H.* and *J.*), and the property being within the jurisdiction of the Court and under its direct control by virtue of the winding-up order, the Court ought to place the dissenting shareholders, with respect to the property of the old company, in the same position as it would have placed them had they applied under § 154 of Act X. of 1866, for an injunction to restrain the transfer until a fund was provided to secure the payment of their interests.

The sanction of the Court, therefore, was given to the resolution, subject to the value of the interest of *H.* and *J.* being paid or adequately secured ; this order being without prejudice to any question between the creditors of the old company and *H.* and *J.* *In re* THE FLEMING SPINNING and WEAVING COMPANY (LIMITED). *Sargent*, J...**I. L. Rep. 3 Bom. 299, 1879.**

2. ——*Practice—Notice of Appeal—Extension of Time for Appeal—Act X. of* 1866, § 141.] Notice of an appeal against any order or decision made or given in the winding up of a company by the Court, must, under § 141 of Act X. of 1866, be given to the respondent within three weeks after the order or decision complained of has been made. The fact that under that Act in connection with the Civil Procedure Code, the service of such notice is effected by the Court, and not by the appellant himself, so that the appellant's right of appeal may depend not

Digitized by Google

COMPANY—WINDING UP—*contd.*

on himself, but on whether the officer of the Court performs his duty, makes no difference. The appellant should ascertain whether the notice of appeal has been duly given, and if he finds that it has not, he should apply to extend the time.

The Court has power to extend the time for giving the notice after the three weeks had expired, upon special circumstances being shown.

In the matter of THE SARAWAK AND HINDUSTAN BANKING AND TRADING COMPANY, LIMITED.

LALLAH BARROOMUL *v.* THE OFFICIAL LIQUIDATOR. *Garth*, C.J., and *White*, J....**I. L. Rep. 4 Cal. 704; 3 Cal. Rep. 581, 1879.**

COMPANY—WINDING UP—CONTRIBUTORY—*Balance Order—Description of Holder of Shares—List of Contributories—Evidence—Amendment of Plaint.*] Where the holder of shares in a company was described in the list of contributories, against whom a balance order of the Court of Chancery had been made, as "Devji Bhanji, Cotton Merchant," and as being sued "in his own right":—

Held, that the plaintiff company could not be allowed to give evidence that the shares were in fact held by a firm consisting of two individuals, named respectively Bhanji Zutani and Devji Hemraj; as the balance order being a part of the record in Chancery, as such, imports incontrovertible verity, nor could the plaintiffs at the hearing of the appeal, be allowed to amend their plaint, originally framed against both partners, with a view to make the firm liable for the amount of the calls, so as to sue Bhanji Zutani only, who alone was alleged to have signed the Articles of Association in the name of Devji Bhanji, and to make him personally liable as the holder of the shares.

THE LONDON, BOMBAY, AND MEDITERRANEAN BANK *v.* BHANJI ZUTANI. *Westropp*, C.J., and *Green*, J...**I. L. Rep. 2 Bom. 116, 1877.**

COMPARATIVE WEIGHT OF AUTHORITY OF HINDU LAW BOOKS.

See **Hindu Law—Authority of Writers.**

COMPENSATION—Apportionment of—for Land taken up for Public Purposes—Finality of Decree—Right of Suit.

See **Land Acquisition Act X. of 1870. 2.**

NILMONEE SINGH *v.* RAMBUNDHOO...**I. L. Rep. 4 Cal. 757.**

—— To Complainant.

See **Compensation. 1.**

—— For land taken up for Public Purposes.

See **Land Acquisition Act X. of 1870. 1.**

PREMCHAND BURRAL *v.* THE COLLECTOR OF CALCUTTA...**I. L. Rep. 3 Cal. 103.**

—— *Criminal Procedure Code, Act X. of* 1872, § 209—*Complainant.*] A *karkun* on the establishment of a Civil Court, entrusted with the execution of a writ, reported to the Court that a particular person obstructed him in attaching property as commanded by the writ; and a report was therefore made by the Court to a Magistrate, with a view to proceedings being taken against the obstructor. The Magistrate acquitted the accused, and ordered the *karkun* to pay the accused compensation, under § 209 of the Criminal Procedure Code:—

Held, that this last order was wrong, the *karkun* not being a complainant within the meaning of § 209 of the Criminal Procedure Code. In such a case the Subordinate Judge must be considered as the complainant, and he, having acted judicially, was not liable to the penalty provided by § 209 of the Code. *In re* KESHAV LAKSHMAN. *Melvill* and *West*, JJ...**I. L. Rep. 1 Bom. 175, 1876.**

COMPENSATION TO FAMILIES FOR LOSS RESULTING FROM DEATH CAUSED BY ACTIONABLE WRONG.

See **Negligence.**

LYELL *v.* GANGA DAI...**I. L. Rep. 1 All. 60.**

COMPENSATION FOR LOSS OF COMMISSION ON SALES — *Dissolution of Partnership — Commission on Sales — Implied Covenant.*] By an agreement made on the 10th of January 1857, between *K. N.* and several other persons, it was agreed that they should form a copartnership for the purpose of erecting a mill for the manufacture of yarn. The capital

Digitized by Google

COMPENSATION FOR LOSS OF COMMISSION ON SALES—*contd.*

of the partnership was fixed at Rs. 3,00,000, and divided into 100 shares of Rs. 3,000 each.

By the 4th clause of the agreement, it was provided that, in return for the trouble *K. N.* had been at in establishing the factory, "whatever cotton had to be purchased for the factory, *K. N.* was to purchase, and whatever yarn should be made in the factory, *K. N.* was to sell, and for whatever he should sell on account of the factory, he was duly to receive from the copartnership his commission at the rate of 5 per cent. *during his life-time*;" and it was also provided that that though the purchases and sales by the copartnership should not be made through *K. N.*, "yet upon the whole amount of the sales the copartnership was duly to pay 5 per cent. to *K. N. during his life-time.*"

The factory was built, and its machinery procured and set up by *K. N.*, and both financially and otherwise the factory was wholly managed by him. Shortly after it commenced work, it was found that the copartnership had expended all its capital and was heavily involved in debt,—incurred by *K. N.*, without the sanction of his copartners,—and that the factory was working at a loss; and at the suit of some of them, but against the consent of *K. N.* and a minority of the copartners, the copartnership was ordered to be dissolved. *K. N.* then claimed to be entitled to compensation for the loss of the commission he would have earned upon the sale of the yarn of the factory *during his life-time.*

Held, that this was not the ordinary case of master and servant, but that of the founder of a company, in which he was a partner, and of which he had become the manager, broker, and agent; that the capital of the company was fixed by the agreement of the 20th of January 1857 at three lakhs of rupees, and that without the consent of all the partners that capital could not be increased; that there was no obligation on the copartners to subscribe more capital after the original capital had been exhausted, and that there was no implied covenant on the part of the copartners to continue the working of the factory in order that *K. N.* should be in a position to earn his commission during his life-time, and that he was, therefore, not entitled to the compensation claimed.

COMPENSATION FOR LOSS OF COMMISSION ON SALES—*contd.*

Held, also, that even if the copartners had covenanted to carry on business during the life-time of *K. N.*, yet as he had mainly contributed to, and forced, the dissolution of the company, he was not entitled to compensation. Distinction between the right to compensation for loss of fixed wages, and the right to compensation for loss of commission, pointed out. LALBHAI VALLABHAI *v.* KAVASJI NANABHAI. *Westropp*, C.J., and *Bailey*, J.....**8 Bom. H. C. Rep., O. C. J. 209, 1871.**

Held, on appeal to the Privy Council, that the contract between *K. N.* and his partners for remuneration to the former for the management of the partnership business by a commission on the sales, during his life-time, did not, in the absence of any express agreement to that effect, imply a relinquishment by the copartners of their right to have the partnership dissolved, if they found that it could only be carried on at a loss; and that it did not imply any obligation to pay *K. N.* compensation if they did exercise that right. KAVASJI NANABHAI *v.* LALLUBHOY VULLUBHOY...**I. L. Rep. 1 Bom. 468, 1876.**

COMPETENT WITNESS—Accused improperly pardoned.

See **Evidence. 2. 3. 4.**

—— Judge or Magistrate.

See **Disqualifying Interest of Judge.**

REG. *v.* BHOLANATH SEN.....**I. L. Rep. 2 Cal. 23.**

See **Evidence. 22.**

EMPRESS *v.* DONELLY.....**I. L. Rep. 2 Cal. 405.**

COMPLAINANT—Compensation to—*Judge* directing Proceedings on Report of Karkun, which Magistrate disbelieved.

See **Compensation.**

KESHAV...**I. L. Rep. 1 Bom. 175.**

—— Contempt of Authority of Public Servant.

See **Criminal Procedure Code, Act X. of 1872, § 210.**

MUSE ADAM...**I. L. Rep. 2 Bom. 653.**

COMPOSITION—Insolvency—Assignment by Debtor in Trust for Creditors.

See **Arbitration. 2.**

KHETA MAL *v.* CHUNI LAL...**I. L. Rep. 2 All. 173.**

Digitized by Google

COMPOSITION DEED—Cancelling—Misrepresentation—Release—Contract Act IX. of 1872, §§ 18-19.

See **Cancellation of Signature.**

ORIENTAL BANK *v.* FLEMING...**I. L. Rep. 3 Bom. 242.**

COMPOUND INTEREST—Hindu Law—Bengal Mofussil.

See **Interest. 4.**

DEEN DAYAL *v.* KYLAS CHUNDER.. **I. L. Rep. 1 Cal. 92.**

COMPOUNDING OFFENCES.

See **Duress.**

MOUNG SHOAY ATT *v.* KO BYAW... **L. Rep. 3 I. A. 61; I. L. Rep. 1 Cal. 330.**

1.—— *Cheating.*] Cheating is not an offence which can be legally compounded. REG. *v.* LAKHU SADASHIV...**I. L. Rep. 1 Bom. 158, n.**

2.—— *Criminal Breach of Trust.*] Nor is criminal breach of trust. REG. *v.* LAKSHMAN GABAJI .....**Ibid.**

3.—— *Defamation.*] Nor defamation. REG. *v.* NUTTY .....**Ibid.**

4.—— *Enticing away a Married Woman.*] Nor enticing away a married woman. REG. *v.* JETHA CHATRU.....**Ibid.**

5.—— *Criminal Procedure Code, Act X. of 1872, §§ 215, 296—Dismissal of Warrant Case—Revival of Prosecution.*] A charge of housebreaking and theft was "dismissed" by the Magistrate on the parties coming to an amicable settlement, and the prosecutrix withdrawing her complaint.

Held, that the "dismissal" was equivalent to a discharge under § 215 of the Criminal Procedure Code (Act X. of 1872), and did not bar the revival of the prosecution; nor did the composition between the parties do so, if that should otherwise be thought necessary or expedient. Housebreaking in order to commit theft is not an offence which, according to § 214 of the Penal Code, can be legally compounded; and the withdrawal from the prosecution in such a case has not, according to § 188 of the Criminal Procedure Code, Act X. of 1872, the effect of an acquittal. REG. *v.* DEVAMA. *West* and *N. Harridass*, JJ.....**I. L. Rep. 1 Bom. 64, 1875.**

COMPOUNDING OFFENCES—*contd.*

6.—— *Voluntarily Causing Grievous Hurt—Penal Code, § 214—Criminal Procedure Code, Act X. of 1872, § 210.*] Whenever the words, "voluntarily," "intentionally," "fraudulently," "dishonestly," or others whose definition involves a particular intention, enter along with a specified act into the description of an offence, the offence not being one "irrespective of the intention," is not one which the exception to § 214 of the Penal Code by itself allows to be compounded without the parties incurring the penalties prescribed by that and the preceding section. The offence, to admit of compromise, must be one in this sense, irrespective of the intention; and must be one for which a civil action may be brought at the option of the injured person, instead of criminal proceedings. The offence of voluntarily causing grievous hurt is therefore one which cannot legally be compounded. *Reg.* v. *Jetha Bala* (10 Bom. H. C. Rep. 68) *dissented from.* REG. *v.* RAHIMAT... **I. L. Rep. 1 Bom 147, 1876, F. B.**

7.—— *Criminal Breach of Trust—Enticing away Married Woman.*] The offences of criminal breach of trust, and enticing away a married woman with a criminal intent, are not offences which may be lawfully compounded. REG. *v.* MUTHAVAN...**I. L. Rep. 1 Mad. 191, 1876, F. B.**

8.—— *Adultery—Penal Code, § 497—Act X. of 1872, § 188.*] *N.* charged *T.* with having committed adultery with his wife. *T.* was convicted by the Sessions Court to which he was committed. *T.* appealed to the High Court. After *T.*'s conviction, *N.* took back his wife to live with him, and asked the High Court to be allowed to compound the offence:—

Held, that at that stage of the proceedings such sanction could not be given, but looking to the relation between the parties, and the fact that *T.* had been in custody for 1½ months, the Court directed the release of *T.* EMPRESS *v.* THOMSON. *Oldfield*, J...**I. L. Rep. 2 All. 339, 1879.**

COMPROMISE — Criminal Charge against Agent—Agent's Power to bind Principal by Compromise.

See **Duress.**

MOUNG SHOAY ATT. *v.* KO BYAW. **L. Rep. 3 I. A. 61; I. L. Rep. 1 Cal. 330.**

Digitized by Google

COMPROMISE—*contd.*

—— Pending Appeal set aside for Fraud—Revival of Right of Appeal.

See **Revival of Right of Appeal.**

RANEE KHUJOOROONISSA *v.* MUSST. ROUSHUN JEHAN...**L. Rep. 3 I. A. 291.**

1. —— *Suit for Recovery of Immoveable Property—Compromise—Breach of Contract of—Act XIV. of* 1859, § 1, *Cl.* 10 *and* 12.] Immoveable property situated partly in *Rohilcund* and partly in *Oudh*, which had formerly belonged to the common ancestors of the appellant and the respondent, was claimed by each on the ground of heirship. By deed of compromise they agreed to divide it in certain proportions, and the agreement was carried out in *Rohilcund* but not in *Oudh*, where the respondent was and continued, in possession. At the end of nine years from the date of the deed of compromise, the appellant sued for possession of her share of the property in *Oudh*.

The Judicial Commissioner of *Oudh* having decided that the suit was founded on the contract contained in the deed of compromise or for a breach of it, and therefore barred by Act XIV. of 1859, § 1, Cl. 10:—It was *held* (reversing this decision), that the claim did not rest on contract only, but on a title to the land acknowledged and defined by the contract, which was only part of the evidence of the appellant to prove her case, and not all her case; and that, consequently, the suit was not founded on a contract or for a breach of it, but was a suit for the recovery of immoveable property "to which no other provision of the Act applies," and, therefore, subject only to the limitation of 12 years prescribed by § 1, Cl. 12. RANI MEWA KUWAR *v.* RANI HULAS KUWAR...**L. Rep. 1 I. A. 157; 13 Beng. L. R. 313, 1874.**

2. —— *Hindu Law— Undivided Family — Separate Property—Son when bound by Compromise effected by his Father—Re-grant by Government.*] Certain ancestral estate was recorded as held in four shares of five *biswas* each, held respectively by four brothers, Darjan Singh, Sundar Singh, Des Raj, and Chattarpat. On the death of Darjan Singh, Chakarpan, his son, was entered as the holder of his share, and after the deaths of Sundar Singh, and Chattarpat, Des Raj was at first recorded as the owner of their shares, but shortly afterwards the names of their widows were entered as the holders of their husbands' shares. At a later period, the names of Ajudhia and Budh Singh, sons of Chakarpan, were substituted for those of the widows. The estate was eventually sold for arrears of Government revenue, but a farm was given to Chakarpan, Ajudhia, Budh Singh, and Des Raj. In 1853 the Government having purchased the estate at an auction sale, proposed to re-grant it to the old zemindars and farmers, and a report regarding the ownership of the estate was called for. The Tahsildar reported that it appeared from the statement of Chakarpan and Gandharp Singh, son of Des Raj, that the widows of Sundar Singh and Chattarpat had made a gift of their shares to Ajudhia and Budh Singh. In 1853, the Collector asked Chakarpan, Gandharp Singh, Budh Singh, and Ajudhia how they proposed to divide the estate among themselves if it was granted to them by Government, and they replied that all four would hold five *biswas* each. The Government eventually agreed to grant the estate on condition that the arrears of revenue which had accrued should be discharged. This offer was accepted, and each of the four persons above named paid his quota. In 1855, the same persons appeared before the revenue officer and requested that each of them might be recorded as the owner of five biswas, and a village administration paper was prepared in which they were entered as in possession each of five biswas. In 1864, they agreed to the appointment of an arbitrator and an umpire to divide these shares. The arbitration proceedings lasted for two years, when Gandharp Sing claimed a ten biswas share, and the arbitrators refused to proceed.

In 1867, Gandharp Singh sued to obtain possession of a two and a half biswas share out of the five originally held by one of the widows, then deceased, and for a declaration of his right to a two and a half biswas share out of the five biswas originally held by the other widow. This suit was compromised, the parties agreeing to divide the estate into four lots, and a decree was passed in terms of the compromise. Ujagar Singh, a son of Gandharp Singh, now sued, in his father's lifetime, to obtain the same relief as his father had sought in the above-mentioned suit in 1867, and a declaration that the arrangement effected by the compromise and decree were ineffectual:—

Held, that assuming that the family remained joint until 1867, the plaintiff's father for all

Digitized by Google

COMPROMISE—*contd.*

intents and purposes represented the interest in the estate which devolved, and would on partition fall to the separate share of himself and his children, and that the plaintiff was bound by his acts, in the absence of evidence of such fraud and collusion as would entitle him to relief on those grounds. The compromise effected by Gandharp Singh was a prudent termination of a litigation which must have resulted in failure, for, besides the cogent evidence provided by Gandharp himself by his declarations in 1853 and 1855 of his acquiescence in the entry of the names of Ajudhia and Budh Sing, there was the difficulty in his way that the property had been granted to Ajudhia and Budh Singh by the Government.

Held also, that if, as there was strong evidence to show, the property was held in separate shares, the shares of the great-uncles of the plaintiff descended as inheritance liable to be obstructed, and that he could not question his father's acts. PITAM SINGH *v.* UJAGAR SINGH. *Pearson* and *Turner*, JJ...**I. L. Rep. 1 All. 651, 1878.**

COMPROMISE OF DECREE.

See **Limitation. 5.**

STOWELL *v.* BILLINGS...**I. L. Rep. 1 All. 350.**

COMPUTATION OF PERIOD OF LIMITATION—For Appeal under Cl. 10, Letters Patent, Allahabad—Deduction of Time requisite for obtaining Copy of Judgment appealed from, not allowed.

See **Letters Patent, Allahabad, Cl. 10. 2.**

FAZAL MUHAMMAD *v.* PHUL KUAR. **I. L. Rep. 2 All. 192.**

See **Limitation. 90.**

JAWAHIR LAL *v.* NARAIN DAS... **I. L. Rep 1 All. 644.**

—— For Appeal—Error in—no Ground for admitting Time-barred Appeal.

See **Time-barred Appeal. 2.**

ZAIBULNISSA BIBI *v.* KULSUM BIBI. **I. L. Rep. 1 All. 250.**

—— For application for Restitution by person dispossessed—Exclusion of Day on which Order or Decree appealed against was made.

See **Limitation. 68.**

GUZAR *v.* BARVE...**I. L. Rep. 2 Bom. 673.**

COMPUTATION OF PERIOD OF LIMITATION—*contd.*

—— Deduction of Time occupied in unsuccessful Enhancement Suit, in Suit for Arrears of Rent at admitted Rate, not allowed.

See **Limitation. 9.**

BROJENDRO COOMAR ROY *v.* RAKHAL CHUNDER ROY.....**I. L. Rep. 3 Cal. 791.**

—— Deduction of Time occupied in unsuccessful Suit for *Khas* Possession, in Suit for Arrears of Rent, not allowed.

See **Limitation. 10.**

HARRO PROSHAD *v.* GOPAUL DASS. **I. L. Rep. 3 Cal. 817.**

—— Deduction of Time occupied in prosecuting Suits in Court without Jurisdiction—Suits under Act XVIII. of 1873.

See **Limitation. 39.**

TIMAL KUARI *v.* ABLAKH RAI... **I. L. Rep. 1 All. 254.**

—— Deduction of Time occupied by proceedings in wrong Court.

See **Limitation. 41.**

SETH KAHANDAS *v.* DHAIABHAI... **I. L. Rep. 3 Bom. 182.**

—— Deduction of Time occupied by former Suit.

See **Limitation. 91.**

PUTALI MEHETI *v.* TULJEE...**I. L. Rep. 3 Bom. 223.**

—— For Execution of Decree—Exclusion of Day on which previous Application for Execution was made.

See **Limitation. 82.**

DHONESSUR KOOER *v.* ROYGOODER SAHOY.....**I. L. Rep. 2 Cal. 336.**

—— Expiration of Period of Limitation on close Holiday—Presentation of Plaint on next Court Day.

See **Limitation. 6. 13.**

BISHAN CHAND *v.* AHMAD KHAN... **I. L. Rep. 1 All. 263.**

PURRAN C. GHOSE *v.* MUTTY LALL G. JOHIRA.....**I. L. Rep. 4 Cal. 50.**

Digitized by Google

COMPUTATION OF PERIOD OF LIMITATION—*contd.*

—— For Execution of Decree—Exclusion of Time occupied in seeking Execution in Court without Jurisdiction.

See **Limitation. 40.**

JIVAN SINGH *v.* SARNAM SINGH... **I. L. Rep. 1 All. 97.**

——As to Parties Added to Suit.

See **Assignment of Mortgage.**

GANPAT PANDURANG *v.* ADARJI DADABHAI.....**I. L. Rep. 3 Bom. 312.**

See **Onus Probandi. 2.**

ABDUL *v.* MANJI...**I. L. Rep. 1 Bom. 295.**

See **Co-sharers of Land. 4.**

BOYDONATH BAG *v.* GRISH CHUNDER ROY...**I. L. Rep. 3 Cal. 26.**

——For Petition for Leave to Appeal to Privy Council—Exclusion of time necessary to obtain Copy of Judgment.

See **Limitation. 90.**

JAWAHIR LAL *v.* NARAIN DAS...**I. L. Rep. 1 All. 644.**

See **Letters Patent (Allahabad) Cl. 10. 2.**

FAZAL MUHAMAD *v.* PHUL KUAR. **I. L. Rep. 2 All. 192.**

——To Suit Commenced *in formâ Pauperis* but Continued in the Ordinary Form.

See **Limitation. 37.**

CHUNDER MOHUN ROY *v.* BHUBO MOHINI DABEA...**I. L. Rep. 2 Cal. 389.**

See **Petition for Leave to Sue in Forma Pauperis. 1. 2.**

SKINNER *v.* ORDE.....**I. L. Rep. 1 All. 230; L. Rep. 6 I. A. 126.**

COMPUTATION OF TIME ACCORDING TO ENGLISH CALENDAR.

See **Bengal Act VIII. of 1869, § 29.**

MAHOMED *v.* BROJOKISHORE...**I. L. Rep. 4 Cal. 497.**

COMPUTATION OF VALUE OF INTEREST CREATED IN IMMOVEABLE PROPERTY—Present Value of Interest, and Amount of Consideration stated in document, irrespective of Future Profits or interest, governs necessity to register.

See **Registration. 1. 7. 8. 9. 16. 17. 18. 20.**

KARAN SINGH *v.* RAM LAL..**I. L. Rep. 2 All. 96.**

SATRA *v.* VISRAM...**I. L. Rep. 2 Bom. 97.**

SHANKAR *v.* VISHNU...**I. L. Rep. 1 Bom. 67.**

NANA *v.* ANANT.....**I. L. Rep. 2 Bom. 353.**

NARSAPPA *v.* GURUAPPA.....**I. L. Rep. 1 Mad. 378.**

RAM D. KOOER *v.* THACOOR ROY... **I. L. Rep. 4 Cal. 61.**

AHMED BAKSH *v.* GOBINDI...**I. L. Rep. 2 All. 216.**

Contra, *see* **Registration. 19. 21.**

RAJPATI SINGH *v.* RAM SUKHI KUAR.....**I. L. Rep. 2 All. 40.**

DARSHAN SING *v.* HANMANTA...**I. L. Rep. 1 All. 274.**

CONCEALMENT OF PRIOR CHARGE.

See **Estoppel. 1.**

MUNNOO LALL *v.* LALLA CHOONEE LALL...**L. Rep. 1 I. A. 144.**

CONCURRENT JUDGMENTS ON FACT.

See **Practice—Privy Council. 1. 2.**

CONDITION IMPOSED ON CONSENT TO AN ADOPTION, OWING TO MISTAKE OF FACT.

See **Hindu Law—Adoption. 15.**

RANGUBAI *v.* BHAGIRTHIBAI.....**I. L. Rep. 2 Bom. 377.**

CONDITION OF RESIDENCE, DEVISE ON.

See **Will. 10.**

TAGORE *v.* TAGORE...**L. Rep. 1 I. A. 387.**

CONDITION IN RESTRAINT OF PARTITION OR ENJOYMENT-Devise with.

See **Hindu Law—Will. 1.**

MOKOONDO LALL *v.* GONESH CHUNDER...**I. L. Rep. 1 Cal. 104.**

Digitized by Google

CONDITIONAL ADOPTION.

See **Hindu Law—Adoption. 5. 18.**

RADHABAI *v.* GANESH...**I. L. Rep. 3 Bom. 7.**

RAMASAWMI *v.* VENCATARAMAIYAN. **L. Rep. 6 I. A. 196.**

CONDITIONAL DECREE—In Pre-emption Suit.

See **Pre-emption. 3. 4. 8.**

SHAIKH EWAZ *v.* MOKUNA BIBI... **I. L. Rep. 1 All. 132.**

HINGAN KHAN *v.* GANGA PARSHAD. **Ibid. 293.**

MAHABIR PARSHAD *v.* DEBI DIAL... **Ibid. 291.**

—— In Redemption Suit.

See **Mortgage. 35. 36.**

RAJA BARDA KANT *v.* BHAGWAN... **I. L. Rep. 1 All. 344.**

SAHIB ZADAH *v.* PARMESHAR DAS. **Ibid. 524.**

CONDITIONAL DEVISE.

See **Will. 10.**

TAGORE *v.* TAGORE...**L. Rep. 1 I. A. 387.**

CONDITIONAL LEGISLATION.

See **Legislative Powers of the Governor-General in Council. 2.**

EMPRESS *v.* BURRAH...**I. L. Rep. 4 Cal. 172; L. Rep. 5 I. A. 178; L. Rep. 3 App. Ca. 889.**

CONDITIONAL SALE—Foreclosure.

See **Hindu Law—Ancestral Property.**

SHAM NARAIN SINGH *v.* RUGHOOBERDYAL...**I. L. Rep. 3 Cal. 508.**

—— Mortgage by—Redemption.

See **Mortgage. 12.**

THUMBASAWMY MUDELLY *v.* MAHOMED HOSSAIN ROWTHEN... **L. Rep. 2 I. A. 241; I. L. Rep. 1 Mad. 1.**

CONFESSION.

—— Attestation by Magistrate when unnecessary.

See **Evidence. 16.**

And *see* **Criminal Procedure Code, Act X. of 1872, § 346.**

CHUMMUN SHAH...**I. L. Rep. 3 Cal. 756.**

CONFESSION—*contd.*

—— Of Co-Accused, Admission of, to Exculpate Co-Accused.

See **Evidence. 8.**

IMPX. *v.* PITAMBER.....**I. L. Rep. 2 Bom. 61.**

—— Of Co-Accused Insufficient of itself to support Conviction.

See **Evidence. 9. 9a. 10. 11. 11a.**

—— Of Co-Accused no Corroboration of Accomplice.

See **Evidence. 11a.**

REG. *v.* BHUDU...**I. L. Rep. 1 Bom. 475.**

—— Inducement by Person in Authority.

See **Evidence. 15.**

EMPRESS *v.* RAMA...**I. L. Rep. 3 Bom. 12.**

—— Informally Recorded, under § 122 of Criminal Procedure Code—Defect remediable by Evidence.

See **Criminal Procedure Code, Act X. of 1872, § 122. 2.**

EMPRESS *v.* RAMANJIVA.....**I. L. Rep. 2 Mad. 5.**

Contra, *see* **Evidence. 12. 14.**

REG. *v.* SHIVA...**I. L. Rep. 1 Bom. 219.**

EMPRESS *v.* MANNOO TAMOOLEE... **I. L. Rep. 4 Cal. 696.**

—— Made to Deputy Commissioner of Police.

See **Evidence. 13.**

REG. *v.* HURRIBOLE...**I. L. Rep. 1 Cal. 207.**

CONFIRMATION OF POSSESSION—Suit for—and Setting Aside Deeds.

See **Setting Aside Deeds.**

TACOORDEEN TEWARRY *v.* NAWAB SYED ALI... **L. Rep. 1 I. A. 192.**

CONFIRMATION OF SALE—Purchaser's Title relates to.

See **Sale in Execution of Decree. 3.**

BHYRUB CHUNDER *v.* SOUDAMINI. **I. L. Rep. 2 Cal. 141.**

—— Under Decree—After Reversal of Decree.

See **Sale in Execution of Decree. 21.**

BASAPPA *v.* DUNDAYA...**I. L. Rep. 2 Bom. 540.**

Digitized by Google

CONFISCATION—On Conviction under § 49, Act XXI. of 1856, no Part of the Sentence.

See **Criminal Procedure Code, Act X. of 1872, § 222.**

EMPRESS *v.* BAIDANATH DAS... **L. Rep. 3 Cal. 366.**

CONFISCATION FOR REBELLION.

See **Act IX. of 1850, § 20.**

MOHUMMUD BAHADOOR KHAN *v.* THE COLLECTOR OF BAREILLY. **L. Rep. 1. I. A. 167.**

CONFISCATION IN OUDH—EFFECT OF.

1. ——*Lord Canning's Proclamation of* 1858 *—Effect of Re-Grant of Confiscated Estate.*] The effect of Lord Canning's Proclamation of the 15th of March 1858, was to divest all the landed property from the proprietors in Oudh, and to transfer it and to vest it in the British Government. Consequently all who since that date claim title to such property must claim through the Government.

The proclamations of Sir James Outram, dated respectively the 22nd of March 1858 and the 25th of March 1858, by the former of which it was "notified for those who have fled from the city, having locked up their houses, that if they would not return within 10 days and re-occupy their houses, the property within their houses will be confiscated," and the latter addressed to the landholders, and which ran thus :—"The Major-General, Chief Commissioner of Oudh, in sending you this proclamation, wishes to inform you that if you at once come in, ready to obey his orders, provided you have taken no part in the atrocities committed on helpless Europeans, none of your lands will be confiscated, and your claims to lands held by you prior to confiscation will be heard," cannot be taken as having the effect of changing the effect of Lord Canning's proclamation, or having any operation in as far as they may be inconsistent with it.

Where a re-grant is made to a former owner the new title will depend entirely on the terms of the re-grant, and if such re-grant is made for life only, no suit can be maintained to rectify an alleged mistake, and for a declaration of an absolute title according to the tenor of the *sunnud* by which the property was held under the old dynasty and prior to the confiscation. NAWAB MALKA JAHAN SAHIBA *v.* DEPUTY COMMISSIONER OF LUCKNOW .....**L. Rep. 6 I. A. 63, 1879.**

CONFISCATION IN OUDH—EFFECT OF—*contd.*

2.——*Lord Canning's Proclamation — Houses in Oudh—Abandonment of Confiscation —Limitation.*] In a suit to recover from the defendant, who was in possession, certain houses in Lucknow and a mouzah in Oudh :—

Held, that the effect of Lord Canning's Proclamation of the 15th March 1858, was to confiscate all the proprietary rights in the soil of the province of Oudh, and to put an end to all previous titles. The plaintiff, therefore, in order to recover the mouzah, must show a title acquired by some grant or proceeding of Government within twelve years prior to the commencement of the suit. As to the houses, their Lordships considered it unnecessary to determine what was the effect of Lord Canning's Proclamation, or what was the effect of Sir James Outram's Proclamation of the 22nd of March 1858 (set out in the preceding case), because with reference to all the houses in Lucknow which were the subject of the present suit it was the intention of the Government to abandon altogether the confiscation, and leave the former owners to their rights in the same way as if there had never been any confiscation :—*Held*, therefore, on a plea of limitation by the defendant, alleging that she was in possession of the houses before the Proclamation, that the issues must be tried and determined in the same manner as if there had never been any confiscation at all.

Issues settled accordingly, and case remanded. PRINCE MIRZA JEHAN KUDR BAHADUR *v.* NAWAB ASSUR BAHU BEGUM...**L. Rep. 6 I. A. 76, 1878; I. L. Rep. 4 Cal. 727.**

CONFLICT OF OPINION BETWEEN INDIVIDUAL JUDGES NO GROUND FOR REFERENCE TO FULL BENCH.

See **Reference to Full Bench.**

RAJ KOOMAR SINGH *v.* SAHEBZADA ROY..**I. L. Rep. 3 Cal. 20.**

CONNIVANCE.

See **Divorce. 2.**

WILLIAMS *v.* WILLIAMS.....**I. L. Rep. 3 Cal. 688.**

CONSENT DECREE—Suit against Heirs of Deceased Mahomedan in Possession of his Estate — Absentee Heirs—Sale in Execution.

Digitized by Google

CONSENT DECREE—*contd.*

See **Mahomedan Law. 1.**

ASSAMATHEM NESSA *v.* ROY LUTCHMEPUT...**I. L. Rep. 4 Cal. 142.**

CONSENT OF OWNER—Property removed with—but with Criminal Intent—Theft.

See **Abetment. 3.**

EMPRESS *v.* TROYLUKHO NATH ..**I. L. Rep. 4 Cal. 366.**

CONSENT OF PRISONER.

See **Disqualifying Interest of Judge.**

REG. *v.* BHOLANATH SEN .....**I. L. Rep. 2 Cal. 23.**

CONSEQUENTIAL RELIEF.

See the cases under **Declaratory Decree.**

—— Declaration of Title to influence Collector.

See **Declaratory Decree. 10.**

CHANDU *v.* CHATHU NAMBIAR...**I. L. Rep. 1 Mad. 381.**

—— Suit for Declaratory Decree where no—can be given, not maintainable.

See **Declaratory Decree. 2. 4. 11.**

STRIMATHOO NATCHIAR *v.* DORASINGA TEVER...**L. Rep. 1 I. A. 169; 15 Beng. L. Rep. 83.**

SINI THIRUVENGADATHIENGAR *v.* S. P. CHINNATHAMBIA...**I. L. Rep. 1 Mad. 65.**

SHEO SINGH RAI *v.* MUSST. DAKHO. **L. Rep. 5 I. A. 87; I. L. Rep. 1 All. 688.**

—— Suit by Plaintiff in Receipt of Rents and Profits, for Possession under *Mál* Title, by setting aside False *Mogolee bromuttur* Title alleged by Defendants.

See **Declaratory Decree. 1.**

RAJAH NILMONEY *v.* KALLY CHURN...**L. Rep. 2 I. A. 83.**

—— Suit by Hindu Reversioner.

See **Declaratory Decree. 8.**

AKBAR KHAN *v.* SHEORATAN...**I. L. Rep. 1 All. 373.**

CONSEQUENTIAL RELIEF—*contd.*

—— Suit to set aside a Pottah granted by Plaintiff's Lessor to Third Person at Invariable Rent—Pottah not yet set up against Plaintiff.

See **Declaratory Decree. 5.**

RAM NEEDHEE *v.* RAJAH RUGHOO NARAIN...**I. L. Rep. 1 Cal. 456.**

CONSIDERATION — Absence of — *Nudum Pactum.*

See **Inam Chitti.**

RAMCHANDRA *v.* KALU.....**I. L. Rep. 2 Bom. 362.**

—— Absence of—Mortgage by Acceptor of *Hundis* still running, on Drawer's Bankruptcy, to secure Payment of *Hundis.*

See **Contract. 6.**

MANNA LAL *v.* BANK OF BENGAL. **I. L. Rep. 1 All. 309.**

—— Agreement by Undivided Hindu Brothers, to recognize Undivided Brother's Rights in Undivided Property—Good.

See **Contract. 3.**

LAKHMI CHAND *v.* TORI LAL...**I. L. Rep. 1 All. 618.**

—— Amount of—stated in Instrument—Measures—Necessity for Registration.

See the Index heading **Computation of Value of Interest created in Immoveable Property.**

—— Deed—between Hindus does not import.

See **Registration. 28.**

RAJU *v.* KRISHNARAV.....**I. L. Rep. 2 Bom. 273.**

—— Evidence of—Suit on Unstamped Promissory Note.

See **Evidence. 4.**

GOLAP CHAND *v.* THAKURANI MOHOKOOM.....**I. L. Rep. 3 Cal. 314.**

—— Evidence to Vary—or show that none existed.

See **Evidence. 20.**

HUKUM CHUND *v.* HIRALAL.....**I. L. Rep. 3 Bom. 159.**

—— Immoral—Past Cohabitation is not.

See **Contract. 4.**

MAN KUAR *v.* JASODHA KUAR...**I. L. Rep. 1 All. 478.**

Digitized by Google

CONSIDERATION—*contd.*

—— Inadequacy of.

See the cases under **Unconscionable Bargain.**

See **Inadequacy of Consideration.**

ADMINISTRATOR GENERAL OF BENGAL *v.* JUGGESWAR ROY...**I. L. Rep. 3 Cal 192 ; 1 Cal. Rep. 107.**

See **Purchase by a Trustee.**

DHONENDER CHUNDER *v.* MUTTY LALL ... **L. Rep. 2 I. A. 18.**

—— Love and Affection—Registration.

See **Contract. 3.**

LAKHMI CHAND *v.* TORI LAL...**I. L. Rep. 1 All. 618.**

—— Past Cohabitation.

See **Contract. 4.**

MAN KUAR *v.* JASODHA KUAR...**I. L. Rep. 1 All. 478.**

—— Surety Bond—Absence of Consideration.

See **Contract. 14.**

NANAK RAM *v.* MEHIN LAL...**I. L. Rep. 1 All. 487.**

—— Time-barred Debt—Good.

See **Limitation. 42. 43. 44.**

RAGOJI *v.* ABDUL...**I. L. Rep. 1 Bom. 590.**

KALLY PROSONNO *v.* HEERA LAL... **I. L. Rep. 2 Cal. 468.**

MUNGOL PRASHAD *v.* SHAMA KANTO...**I. L. Rep. 4 Cal. 708.**

See **Administration. 2.**

DHANJIBHAI *v.* NAVAZBAI...**I. L. Rep. 2 Bom. 75.**

See **Hindu Law—Alienation by Widow. 5.**

BHALA *v.* PARBHU...**I. L. Rep. 2 Bom. 67, 71.**

See **Time-barred Debt.**

ADMINISTRATOR GENERAL *v.* HAWKINS..**I. L. Rep. 1 Mad. 267.**

—— Time-barred Decree.

See **Kistbandi.**

HEERA LALL *v.* DHUNPUT SINGH.. **I. L. Rep. 4 Cal. 500.**

—— Unlawful.

See **Contract. 18.**

FATEH SINGH *v.* SANWAL...**I. L. Rep. 1 All. 751.**

CONSIDERATION—*contd.*

—— Written Contract—Parol Evidence to show no—or to vary.

See **Evidence. 20.**

HUKUMCHUND *v.* HIRALAL...**I. L. Rep. 3 Bom. 159.**

CONSTITUTION OF JURY.

See **High Court Criminal Procedure Code, Act X. of 1875, §§ 32 to 37.**

REG. *v.* LALUBHAI...**I. L. Rep. 1 Bom. 232.**

REG. *v.* VITHALDAS...**Ibid. 462.**

CONSTITUTION OF THE SMALL CAUSES COURT AT CALCUTTA

See **Small Cause Court—Presidency Town. 5.**

OMRITOTALL DEY...**I. L. Rep. 1 Cal. 78.**

CONSTRUCTION OF ACT.

See **Construction of Statute.**

—— Relating to Procedure.

See **Civil Procedure Code, Act X. of 1877, § 342.**

RATTANSI KALIANJI...**I. L. Rep. 2 Bom. 148.**

CONSTRUCTION OF DECREE.

See **Decree.**

SHAMMAN SINGH *v.* GANGA RAM... **I. L. Rep. 2 All. 342.**

HARSUKH *v.* MEGRAJ...**Ibid. 345.**

See **Account. 1.**

HIRJI JINA *v.* NARAN MULJI...**I. L. Rep. 1 Bom. 1.**

—— *Notes of Judgment in Deputy Registrar's Book.*] A note of a judgment of the Appellate Court taken by a Deputy Registrar, cannot be looked at for the purpose of explaining or aiding in the construction of the decree of the Appellate Court ; nor can notes taken from the book of the Judge who pronounced the judgment of the Appellate Court be looked at for that purpose. The decree must be construed as it stands. Where, therefore, a decree was, on the face of it, an ordinary decree, in a partnership suit for the taking of the accounts between the partners in the usual way, the Court refused to allow the respondent to show, by reference to such notes, that what the decree meant was, that he was to be credited, and his partners debited, with certain payments *in toto*, and not with their respec-

Digitized by Google

CONSTRUCTION OF DECREE—*contd.*

tive shares only. SUMAR AHMED *v.* HAJI ISMAIL HAJI HABIB. *Westropp*, C. J., and *Green*, J....I. L. Rep. 1 Bom. 158, 1876.

CONSTRUCTION OF INTERPRETATION CLAUSES IN ACTS OF THE LEGISLATURE.

See **Construction of Statute. 7.**

GUR DAYAL...I. L. Rep. 2 All. 205, 208.

CONSTRUCTION OF POTTAH — Grant during Continuance of Lessor's Interest.

See **Grant during Continuance of Lessor's Interest.**

BABOO LEKHRAJ ROY *v.* KUNHYA SINGH...L. Rep. 4 I. A. 223; I. L. Rep. 3 Cal. 210.

CONSTRUCTION OF STATUTE.

—— Apparently Opposed.

See **Construction of Statute. 2.**

—— Illustrations.

See **Construction of Statute. 7.**

—— Imposing Tax.

See **Madras Act III. of 1871.**

LEMAN *v.* DAMODARAYA.....I. L. Rep. 1 Mad. 158.

—— *In Pari Materiâ.*

See **Jurisdiction. 13.**

COLLECTOR OF SEA CUSTOMS *v.* PUNNIAR...I. L. Rep. 1 Mad. 89.

—— Interpretation Clauses.

See **Construction of Statute. 6.**

—— Of Limitation.

See **Construction of Statute. 3.**

—— Limiting Right to Resort to Courts of Justice.

See **Pensions Act XXIII. of 1861. 3. 4.**

RAVJI *v.* DADAJI...I. L. Rep. 1 Bom. 523.

GURUSHIDGAVDA *v.* RUDRAGAVDA... I. L. Rep. 1 Bom. 531.

—— Penal Statute.

See **Construction of Statute. 4.**

—— Relating to Procedure.

See **Civil Procedure Code, Act I. of 1877, § 342.**

RATTANSI...I. L. Rep. 2 Bom. 148.

CONSTRUCTION OF STATUTE—*contd.*

—— Repeal, Effect of.

See **Construction of Statute. 5.**

—— Words 'May,' 'Must.'

See **Construction of Statute. 1.**

1.—— *Words "May," "Must."*] In some cases the word "must" or the word "shall" may be substituted for the word "may"; but that can only be done for the purpose of giving effect to the intention of the Legislature; but in the absence of proof of such intention, the word "may" must be taken to be used in its natural, and therefore in a permissive and not in an obligatory sense. DELHI AND LONDON BANK *v.* ORCHARD.....L. Rep. 4 I. A. 127, 1877; I. L. Rep. 3 Cal. 47.

S. C. under **Limitation. 36.**
And **Res Judicata. 3.**

2.—— *Statutes apparently opposed.*] "When enactments are apparently opposed, it is a cardinal principle in the interpretation of a statute that the one must, if possible, be read as a qualification of the other, so that some effect furthering the intention of the Legislature may be given to each." *Per West*, J., in SHANKAR RAMCHANDRA *v.* VISHNU ANANT...I. L. Rep. 1 Bom. 67, 69.

3.—— *Acts of Limitation—Construction of.*] Acts of Limitation being restrictive of the ordinary right to take legal proceedings, must, where their language is ambiguous, be construed strictly, *i.e.*, in favour of the right to proceed. *Per Westropp*, C.J., in UMIASHANKAR LAKHMIRAM *v.* CHOTALAL VAJIRAM.....I. L. Rep. 1 Bom. 19-22, 1875.

S. C. under **Limitation. 69.**

4.—— *Penal Statute — Construction.*] A penal statute, when its language is ambiguous, must be construed in the manner most favourable to the liberties of the subject, and this is more especially so when the penal enactment is of an exceptional character. REG. *v.* BHISTA MADANNA.....I. L. Rep. 1 Bom. 308, 1876, F. B.

S. C. under **Act XXVI. of 1850.**

5.—— *Repeal—Right acquired under Repealed Act.*] The repeal of a statute or other legislative enactment cannot, without express words, or clear implication to that effect, in the repealing Act, take away a right acquired under the repealed statute or other enactment while it

Digitized by Google

CONSTRUCTION OF STATUTE—*contd.*

was in force. *Per Westropp*, C.J., in SITARAM VASUDEV *v.* KHANDERAV BALKRISHNA.....**I. L. Rep. 1 Bom. 286-291.**

6. —— *Interpretation Clauses—Construction of.*] "Although I do not attach so much importance and force to interpretation clauses in Acts of the Legislature as is sometimes claimed for them —holding that they should not be read merely by themselves, but that they may be controlled and limited by other express provisions of the same law, and as a consequence, that if inconsistent with and repugnant to such other provisions they may be disregarded,—yet they are frequently very useful." *Per Stuart*, C.J., in *In the matter of the Petition of* GUR DAYAL...**I. L. Rep. 2 All. 205, 208.**

7. —— *Illustrations Annexed to Acts of the Legislature—Force of.*] The illustrations annexed to the Acts of the Legislature, although attached to, do not in legal strictness form part of the Acts, and are not absolutely binding on the Courts. They merely go to show the intention of the framers of the Acts, and in that and other respects they may be useful, provided they are correct. *Per Stuart*, C.J., in NANAK RAM *v.* MEHIN LAL.....**I. L. Rep. 1 All. 487, 493, 1877.**

S. C. under **Contract. 14.**

CONSTRUCTION OF SANAD.

See **Grant of Jaghir by the East India Company.**

GULABDAS *v.* COLLECTOR OF SURAT...**L. Rep. 6 I. A. 54; I. L. Rep. 3 Bom. 186.**

See **Grant of Taluk.**

BHOOBUN MOHINI *v.* HARRISH CHUNDER...**I. L. Rep. 4 Cal. 23; L. Rep. 5 I. A. 138.**

1. —— *Construction of—Ownership in Soil.*] The plaintiff claimed, as proprietor of one moiety of the village of Nanej, to recover from the Mamlatdar a moiety of the land rents wrongfully intercepted by him in the year 1870-71, and based his claim on a *sanad* granted by the Raja of Satara in 1833-34, which purported to grant to the plaintiff's ancestor in *Inam* the village of Nanej, "including the waters, the trees, the stones (including quarries), the mines, and the hidden treasures therein, but excluding the *Hakdars* and *Inamdars*."

CONSTRUCTION OF SANAD—*contd.*

Held, that the determination of the nature of the claim and title of the plaintiff must rest on the terms of the grant, irrespectively of the use which the plaintiff or his ancestors may have made of the land. Though, as said in *Krishna* v. *Rangrav* (4 Bom. H. C. Rep. A. C. J. 7), *Sanadi* grants in *Inam*, *Saranjam*, &c., are, *generally speaking*, more properly described as alienations of the royal share in the produce of the land, *i.e.*, of land revenue, than grants of land, although in popular parlance so called, yet such is not invariably the case.

If words are employed in the grant which expressly or by necessary implication indicate that Government intends, that so far as it may have any ownership in the soil, that ownership shall pass to the grantee, neither Government, nor any person subsequently to the date of the grant deriving under Government, can be permitted to say that the ownership did not pass.

And therefore, under the terms of the above grant, the proprietary right in the soil of the village passed to the plaintiff, and not merely the land revenue, the reservation of the rights of *Hakdars* and *Inamdars* not preventing the property in the soil, so far as it could be regarded as having been vested in the Government, from passing to the *Inamdar*. RAVJI N. MANDLIK *v.* DADAJI BAPUJI DESAI. *Westropp*, C.J., and *Larpent*, J...**I. L. Rep 1 Bom. 523, 1875.**

See this case also under **Pensions' Act XXIII. of 1871. 3.**

2. —— *Grant in* Inam—Kulbab Kulkanu, *excepting Rights of* Hakdars.] A *sanad* of the Satara Government purported to grant a certain quantity "out of the *khalsa* waste land" to *A. B.* "from generation to generation without interruption," and proceeded:—"The above land is granted *Kulbab Kulkanu* (with all cesses and taxes), together with the present and the future cesses, exclusive of (*i.e.*, excepting) the (rights of) previous *hakdars*." *Westropp*, C.J., said (p. 341):—"The description in the *sanad* of the premises demised as '*khalsa* waste land' is to a certain extent against the supposition that there was then any *mirasi* right in existence, but this is counterbalanced by the statement in the same *sanad* that there were then cesses payable out of the lands. This *sanad* is more similar in form to the *sanad* in *Vaman Janardhan Joshi* v. *The Collector of Thana* (6 Bom. H. C. Rep., A. C. J., 191) than to the *sanad* in *Ravji Narayan*

Digitized by Google

CONSTRUCTION OF SANAD—*contd.*

Mandlik v *Dadaji Bapuji Desai* (I. L. Rep. 2 Bom. 523): but in either case, rights existing in private individuals at the date of the *sanad* would not pass, under the grant by Government, to the *inamdar* created there." BABAJI *v.* NARAYAN.....**I. L. Rep. 3 Bom. 340, 1879.**

S. C. under **Miras. 1.**

And **Practice—Civil. 10.**

CONSTRUCTION OF WILL OF HINDU IN ENGLISH FORM.

See **Executor, Estate of. 2.**

SALUBHAI *v.* MANCUVARBAI...**I. L. Rep. 2 Bom. 338.**

CONSTRUCTIVE POSSESSION THROUGH INTERMEDIATE HOLDERS.

See **Criminal Procedure Code, Act X. of 1872, § 530. 1.**

EMPRESS *v.* THACOOR DYAL.....**I. L. Rep. 3 Cal. 320.**

CONSTRUCTIVE FRAUD—*Mortgagors and Mortgagees—Priority.*] *M.* mortgaged by a registered mortgage deed certain property to his brothers, the appellants, to secure repayment of a loan. Subsequently *M.* mortgaged the same property to *P. I.*, one of *M.*'s brothers, attested this mortgage deed. *M.* subsequently borrowed money from B. to pay off *P.*'s mortgage; and *S.*, another brother of *M.*, attested the mortgage deed in favour of *B.* *B.* obtained a decree on his mortgage, and at a sale in execution thereof the respondents purchased the mortgaged property. The brothers of *M.* caused their mortgage to be notified at the sale. In a suit brought by the brothers of *M.* to enforce their mortgage lien against the respondents:—

Held, that the respondents as auction purchasers were entitled to put forward the same pleas as might have been urged by the mortgagees had the question of priority arisen before the sale. Though they purchased with notice of the appellants' claim, they knew also that the claim was contested, and the notification of the claim at the sale could not restore to the appellants priority if they had already lost it.

Held also, that it is a rule of equity that where a man by his conduct or language wilfully causes another to conceive an erroneous impression, and to act on the impression he has so formed and to alter his position, he cannot afterwards be allowed to claim any benefit for

CONSTRUCTIVE FRAUD—*contd.*

himself by asserting that the facts were contrary to the impression he had produced; and a man must be presumed to intend the natural consequences of his conduct or language. If a man stands by and sees another sell property which belongs to him, he is bound to proclaim his title. If he fails to do so, and a stranger is induced by his silence to believe he has no title, and, under that impression, expends his money on the purchase of his property, equity holds the man so standing by, if he fails to explain his silence, guilty of constructive fraud, and postpones his title to that of the purchaser. It is, however, of the essence of constructive fraud, that the person sought to be charged therewith should be proved to have concurred or co-operated in some deceit, or to have been guilty of gross negligence. It is not enough to show merely that a man, knowing that persons are dealing with his property out of his presence, keeps silence. But if a person who proposes to make an advance on a property informs a mortgagee of his intention in such a manner as to show that he intended to be guided by what he might hear from the mortgagee, and the mortgagee remains silent, still more if a direct inquiry is made of the mortgagee and he remains silent, then in either of these cases the mortgagee will be held guilty of constructive fraud. Although mere attestation of the execution of a mortgage-deed by a prior mortgagee is not sufficient to create an estoppel, because it does not necessarily follow that a witness is aware of the contents of the deed of which he attests the execution, yet where that knowledge is brought home to him, and there are circumstances to show that he acted dishonestly and disingenuously to the subsequent mortgagee, and that the subsequent mortgagee was deceived in consequence, the prior mortgagee will be deprived of his priority.

Applying these principles, those brothers of *M.* who simply remained silent, though cognizant that *M.* was dealing with the mortgaged property, were not debarred from insisting on their claim. Nor was the case stronger against *I.*, who attested the deed to *P.* The sale was not made under that deed, nor was the mortgage in favour of *P.* kept alive and assigned to the subsequent mortgagees. But, under the circumstances, *Held* as regards *S.*, that he had by his silence lost his right of priority. SALAMAMAT ALI *v.* BUDH SINGH. *Turner* and *Spankie*, JJ...

I. L. Rep. 1 All. 303, 1876.

Digitized by Google

CONSTRUCTIVE NOTICE—Notice to Solicitor.

See **Limitation. 38, a.**

GREENDER CHUNDER GHOSE *v.* MACKINTOSH...**I. L. Rep. 4 Cal. 897.**

CONSTRUCTIVE TRUST.

See **Limitation. 22.**

DURGA PRASAD *v.* ASA RAM...**I. L. Rep. 2 All. 361.**

CONSTRUCTIVE TRUSTEE.

See **Insolvency. 3.**

BHAVAN *v.* KAVASJI...**I. L. Rep. 2 Bom. 542.**

CONSUL—British—at Zanzibar—Jurisdiction of.

See **Zanzibar.**

WAGJI KORJI *v.* THARIA TOPAN...**I. L. Rep. 3 Bom. 58.**

CONTEMPORANEOUS ORAL AGREEMENT CONTRADICTING WRITTEN CONTRACT—Evidence of.

See **Evidence. 19. 20.**

BANAPA *v.* SUNDERDAS...**I. L. Rep. 1 Bom. 333.**

HUKUMCHUND *v.* HIRALAL...**I. L. Rep. 3 Bom. 159.**

See **Mortgage. 22.**

MORAN *v.* MITTU BIBEE...**I. L. Rep. 2 Cal. 58.**

CONTEMPORANEOUS ORAL AGREEMENT TO RESCIND REGISTERED CONTRACT.

See **Incomplete Contract.**

UMEDMAL *v.* DADA...**I. L. Rep. 2 Bom. 547.**

CONTEMPT OF COURT—Intentional False Evidence is—and therefore not triable by Court before which given—different Incumbent of Office may try.

See **False Evidence.**

REG. *v.* GAJI...**I. L. Rep. 1 Bom. 311.**

See **Criminal Procedure Code, Act X. of 1872, § 471. 1.**

REG. *v.* GUR BAKSH...**I. L. Rep. 1 All. 193.**

See **The Cases under Criminal Procedure Code, Act X. of 1872, § 473. 1. 2. 3.**

CONTEMPT OF COURT—*contd.*

——Continuing Nuisance after Injunction to discontinue.

See **Criminal Procedure Code, Act X. of 1872, § 473. 1.**

REG. *v.* PARSAPPA...**I. L. Rep. 1 Bom. 339.**

—— Imprisonment for—Jurisdiction of High Court—Act X. of 1877, §§ 341, 342.

See **Imprisonment for Contempt of Court.**

MARTIN *v.* LAWRENCE. **I. L. Rep. 4 Cal. 655.**

CONTINUATION IN FORMA PAUPERIS OF SUIT COMMENCED IN ORDINARY FORM.

See **Suit in forma Pauperis.**

NIRMUL CHANDRA *v.* DAYAL NATH. **I. L. Rep. 2 Cal. 130.**

CONTINUATION IN ORDINARY FORM OF SUIT COMMENCED IN FORMA PAUPERIS.

See **Petition for Leave to sue in forma Pauperis.**

SKINNER *v.* ORDE.....**I. L. Rep. 1 All. 230; L. Rep. 6 I. A. 126.**

See **Limitation. 37.**

CHUNDER MOHUN *v.* BHUBON MOHINI...**I. L. Rep. 2 Cal. 389.**

CONTINUATION OF NUISANCE AFTER INJUNCTION TO DISCONTINUE.

See **Criminal Procedure Code, Act X. of 1872, § 473. 1.**

REG. *v.* PARSAPPA...**I. L. Rep. 1 Bom. 339.**

CONTRACT — Affecting Land — Transfer of the Land.

See **Covenant running with the Land.**

ABADI BEGUM *v.* ASA RAM...**I. L. Rep. 2 All. 162.**

—— of Affreightment.

See **Contract. 16.**

—— Agency—Commission during Agent's Lifetime—Sale of Subject of Agency—Compensation.

Digitized by Google

CONTRACT—*contd.*

See **Compensation for Loss of Commission.**
COWASJI *v.* LALLBHOY.....**8 Bom. H. C. Rep. O. C. J. 209; I. L. Rep. 1 Bom. 468; L. Rep. 3 I. A. 200.**

—— Agreement to Alter the Course of Devolution of Property prescribed by Law.
See **Hindu Law—Relinquishment of Share by Son.**
BALKRISHNA *v.* SAVITRIBAI...**I. L. Rep. 3 Bom. 54.**

—— Agreement Not to Appeal.
See **Contract. 8.**
ANANT DAS *v.* ASHBURNER.....**I. L. Rep. 1 All. 267.**

—— Alteration of.
See **Alteration of Contract.**
EDE *v.* KANTO NATH SHAW...**I. L. Rep. 3 Cal. 220.**

—— Avoidance of—Duress.
See **Duress.**
MOUNG SHOAY ATT *v.* KO BYAW.
L. Rep. 3 I. A. 61; I. L. Rep 1 Cal. 330.

—— Breach of—Jurisdiction—Whole Cause of Action.
See **Jurisdiction. 14.**
MUHAMMAD ABDUL KADAR *v.* E. I. RY. CO...**I. L. Rep. 1 Mad. 375.**

—— Breach of—to Purchase Goods—Collateral Contract by Vendor—Measure of Damages.
See **Damages. 2.**
COHEN *v.* CASSIM NANA...**I. L. Rep. 1 Cal. 264.**

—— Capacity of Married Women to.
See **Hindu Law—Capacity of Married Woman to contract.**
NATHUBHAI *v.* JAVER...**I. L. Rep. 1 Bom. 121.**
See **Married Woman's Property Act III. of 1874.**
ALUMUDDY *v.* BRAHAM...**I. L. Rep. 4 Cal. 140.**
See **Married Woman's Separate Property. 2. 3.**
HURST *v.* MUSSOORIE BANK...**I. L. Rep. 1 All. 762.**
BERESFORD *v.* HURST...**Ibid. 772.**

CONTRACT—*contd.*

—— Collateral.
See **Damages. 2.**
COHEN *v.* CASSIM NANA...**I. L. Rep. 1 Cal. 264.**

—— Consideration for.
See the Index heading **Consideration.**
See **Inadequacy of Consideration.**

—— without Consideration—Void Contract.
See **Contract. 6.**

—— by Correspondence—Registration.
See **Contract. 2.**

—— to Create an Interest in Immoveable Property.
See **Registration. 12.**
VALAJI *v.* THOMAS...**I. L. Rep. 1 Bom. 190.**

—— Entered into in England to be performed in India..
See **Contract. 17.**
OAKES & Co. *v.* JACKSON...**I. L. Rep. 1 Mad. 134.**

—— Entered into in Foreign Country.
See **Jurisdiction. 7.**
MATHAPPA *v.* CHELLAPPA...**I. L. Rep. 1 Mad. 196.**

—— Entire Cargo, Contract to purchase.
See **Contract. 1.**

—— Executed and Stamped in England, subsequently executed in India—Stamp.
See **Contract. 17.**

—— not to Execute a Decree.
See **Estoppel. 6.**
PARAM SINGH *v.* LALJI MAL...**I. L. Rep. 1 All. 403.**

—— to Give in Marriage—Specific Performance of.
See **Injunction. 1.**
GUNPUT NARAIN SING.....**I. L. Rep. 1 Cal. 74.**

—— Hindu Law of—Applicability of, to Bengal Mofussil.
See **Interest. 4.**
DEEN DOYAL *v.* KYLAS CHUNDER...
I. L. Rep. 1 Cal. 92.

—— Implied.
See **Married Woman's Separate Property. 3.**
BERESFORD *v.* HURST...**I. L. Rep. 1 All. 772.**

Digitized by Google

CONTRACT—*contd.*

—— Incomplete.
See **Incomplete Contract.**
UMEDMAL *v.* DAVA...**I. L. Rep. 2 Bom. 547.**

—— Interest, Contract to pay at High Rate on Default of Payment of Promissory Note at Due Date.
See **Contract. 12.**

—— Introduction of New Term into.
See **Contract. 3.**

—— Mistake.
See **Contract. 5. 11.**
See **Mistake.**

—— with Pleader for Reward proportioned to Amount decreed.
See **Inam Chitti.**
RAMCHUNDRA *v.* KALU...**I. L. Rep. 2 Bom. 362.**

—— for Purchase of Immoveable Property contemplating Future Conveyance.
See **Registration. 12.**
VALAJI *v.* THOMAS...**I. L. Rep. 1 Bom. 190.**

—— to Purchase Future Interest in Immoveable Property.
See **Contract. 2.**

—— Readiness and Willingness to Perform.
See **Contract. 1.**

—— to Refer to Arbitration—Right to rescind—Specific Performance.
See **Contract. 8.**

—— Registration of.
See **Registration.**

—— in Restraint of Trade.
See **Contract. 17. 17a.**

—— Right to rescind.
See **Contract. 9.**
See **Sale of Goods.**
SHOSHI MOHUN *v.* NOBO KRISHTO. **I. L. Rep. 4 Cal. 801.**

—— for Sale of Cargo or Entire Cargo to arrive.
See **Contract. 1.**

—— for Sale of Goods—Ownership in Goods sold when transferred.
See **Sale of Goods.**
SHOSHI MOHUN *v.* NOBO KRISHTO. **I. L. Rep. 4 Cal. 801.**

CONTRACT—*contd.*

—— for Sale of Goods—Right to rescind—for Breach of Warranty of Quality.
See **Sale of Goods.**
SHOSHI MOHUN *v.* NOBO KRISHTO. **I. L. Rep. 4 Cal. 801.**

—— to Share the Subject of Matter of Litigation.
See **Champerty. 2.**
RAM COOMAR *v.* CHUNDEE CANTO. **I. L. Rep. 2 Cal. 233.**

—— to Settle Property on Adopted Son—Specific Performance of.
See **Hindu Law—Adoption. 16.**
BHALA *v.* PARBHU...**I. L. Rep. 2 Bom. 67.**

—— Specific Performance of.
See **Specific Performance.**

—— to Supply Labour.
See **Act XIII. of 1859.**
ROWSON *v.* HANAMA MESTRI...**I. L. Rep. 1 Mad. 280.**

—— to Take Shares in a Company.
See **Agreement to take Shares in a Company.**
ANANDJI VISRAM *v.* NARIAD S. & W. Co...**I. L. Rep. 1 Bom. 320.**

—— Time of the Essence of.
See **Contract. 9.**
SOOLTAN CHUND *v.* SCHILLER...**I. L. Rep. 4 Cal. 252.**

—— Transfer of Contract of Sale.
See **Contract. 1.**

1.—— *Transfer of Contract of Sale—Construction—Cargo—Entire Cargo—Readiness and Willingness.*] On the 16th of April 1878, the plaintiffs contracted to purchase from Messrs. Finlay, Muir & Co. of Bombay, at Rs. 18 per ton, "the entire cargo of coal per 'Culzean,' amounting to 900 tons or thereabouts." On the 18th of April, the plaintiff transferred the contract to the defendant and one Nanabhai Bomanasha, and the following endorsement was made upon the contract:—"The contract to be transferred to Messrs. Tullockchund and Shapurji and Nanabhai Bomansha at Rs. 20½. For C. H. B. Forbes & selves, W. Tennent & Co." Underneath this endorsement the transferees wrote the following words:—"Accepted 450 tons at Rs. 20½ per ton. Nanabhai Bomansha. Accept.

Digitized by Google

CONTRACT—*contd.*

ed 450 tons at Rs. 20½. Tullockchand and Shapurji." The "Culzean' arrived at Bombay with a cargo of 2,167 tons of coal, of which it appeared that 1,300 tons had been shipped to the Bombay, Baroda and Central India Railway Company, and 867 tons to the order of the shippers, Messrs. Mason & Co. of Leith. Messrs. Finlay, Muir & Co. were agents in Bombay for the owners of the "Culzean" and for the shippers of the coal. On the 21st of June the "Culzean" began to discharge coal for the Bombay and Baroda Railway Company, and on the 27th of June about 382 tons had been discharged. The defendants refused to take delivery of the coal, on the ground that the contract transferred to them was a contract for an entire cargo. The plaintiff sued the defendants for non-acceptance, contending that there had been no transfer to the defendants and Nanabhai Bomansha of the original contract, but that the above endorsements amounted to a new offer which had been accepted by the plaintiff, and constituted several contracts with the defendants and Nanabhai Bomansha:—

Held, that save as modified by the words of the endorsements by the defendants and Nanabhai Bomansha respectively, all the terms of the contract between Messrs. Finlay, Muir and Co. and the plaintiffs were binding as between the plaintiffs and the defendants and Nanabhai Bomansha respectively. There was no inconsistency between the endorsements and the original contract, in the fact that the endorsements mentioned 450 tons, whereas the original contract was for 900 tons *or thereabouts*. The joint effect of the endorsements and the original contract was that the defendants agreed to purchase 450 tons, part of an entire cargo of 900 tons or thereabouts. As the two lots of 450 tons were to come out of a cargo described as "of 900 tons or thereabouts," the "thereabouts" of the original contract applied to each of 450 tons, and the contracts of the defendants and Nanabhai Bomansha respectively were in each case for 450 tons or thereabouts, out of an entire cargo of 900 tons or thereabouts.

The circumstance that the defendants and Nanabhai Bomansha were in some way connected, and operating, as it were, together, though not as joint contractors, with the plaintiffs, did not affect the question. Had the contract been with the present defendants alone for 450 tons,

CONTRACT—*contd.*

the rest of the 900 tons being sold to a purchaser quite unconnected with them, or had the plaintiffs themselves retained the rest, the defendants would still have been entitled to decline the 450 tons, unless the 900 tons or thereabouts was the entire cargo. A person who contracts to buy a cargo or an "entire cargo" is not bound to accept goods which though answering in quantity and quality to the quantity and quality mentioned as that of the cargo purchased, are not in fact *the cargo*, by reason that the ship has other cargo, and particularly of the same description, on board. *Borrowman* v. *Drayton* (L. Rep. 2 Ex. D. 15) followed. *Semble*—that if the defendants had not been entitled to refuse to accept delivery for the reasons above set forth, the issue of whether the plaintiffs were ready and willing to deliver the coals to the defendants and Nanabhai Bomansha should be found in the affirmative, notwithstanding that after delivery of the 1,300 tons consigned to the Bombay and Baroda Railway Company, there would only have been 409½ tons for the defendants and Nanabhai Bomansha respectively, as such deficit would be covered by the "thereabouts" of the original contract. C. H. B. FORBES *v.* TULLOCKCHAND MANOCKCHAND. *Green*, J..... **I. L. Rep. 3 Bom. 386, 1878.**

2.——*Debentures—Interest—Agreement to purchase Future Interest in Immoveable Property—Registration.*] *A.* held debentures of *B.*, a Municipal body, and had a right to exchange them for lots of equal value, to be selected by him from building lands belonging to *B.*; the rent of which lots was to be set off against the interest on the debentures. *A.* notified to *B.*, that he had selected certain lots, and asked permission to retain the debentures for a time, setting the interest against the rent. *B.* consented to *A.*'s proposal, and at the same time informed *A.* that the selected lots exceeded the value of his debentures, and that he must pay the difference. *A.* made no reply to this communication.

A. afterwards sued *B.* for interest on the debentures:—

Held, that *A.* was not entitled to interest, the contract being complete, and the indication by *B.* of the difference in quantity not amounting to an introduction of a new term into the negotiations.

Digitized by Google

CONTRACT—*contd.*

A correspondence between *A.* and *B.* amounted to a contract to purchase a future interest in immoveable property :—

Held, that such correspondence did not require registration under the Registration Act XX. of 1866. THE PORT CANNING LAND INVESTMENT CO. *v.* SMITH...**L. Rep. 1 I. A. 124, 1874 ; L. Rep. 5 P. C. 114 ; 21 W. R. 315 ; 30 L. T. N. S. 531.**

3.——*Consideration.*] By a written agreement duly registered, *T.*, in consideration of the recognition by his two brothers of his rights in the joint and undivided property of the three brothers, and of their undertaking to procure the entry of his name in the revenue register in respect of a one-third share, agreed not to sell, transfer, or mortgage such share except to his brothers, and should he desire to dispose of such share, to dispose of it to them for a certain price. *T.*'s name was subsequently recorded as proprietor in respect of the one-third share, and he then in breach of the agreement, gave a usufructuary mortgage of his share to the plaintiff. In a suit by the latter to enforce the mortgage :—

Held, that the agreement was valid. If it was made out of natural affection, it was expressed in writing and registered. If the consideration was that expressed, *viz.*, the recognition of *T.*'s right to a share, there was a consideration. The mortgage to the plaintiff, therefore, was bad as against *T.*'s brothers. LAKHMI CHAND *v.* TORI LAL. *Turner* and *Spankie*, JJ...**I. L. Rep. 1 All. 618, 1878.**

4. —— *Consideration—Immoral Consideration—Past Cohabitation.*] *M.* had for many years lived with *G.* as his concubine. In consideration of such past cohabitation, *G.*, by an agreement in writing, dated the 28th of March 1869, and duly registered, settled an annuity on *M.*, charging a portion of his real estate with the payment of such annuity. In a suit by *M.* against G.'s heir, his married, wife, to enforce the agreement :—*Held*, that the consideration for the agreement was not, under the law in force at the time of its execution, immoral, nor was the agreement, under the same law, void for want of consideration.

Held also, that before *M.* could recover from the defendant on the agreement, it was necessary to show that the defendant had received funds available to meet the claim from the

CONTRACT—*contd.*

profits of the estate charged with the payment of the annuity, or from other property of *G.* MAN KUAR *v.* JASODHA KUAR. *Pearson* and *Turner*, JJ.....**I. L. Rep. 1 All. 478, 1877.**

5.—— *Act IX. of* 1872, §§ 20, 22, Cl. 2—*Mistake of Fact and Law—Error in Statement of Account.*] Where the property of a judgment debtor had been attached in execution of a sum claimed to be due under a decree, but which sum in fact included interest not awarded by the decree :—

Held, that an agreement, whereby the debtor obtained the release of his property on condition of paying by instalments the entire amount claimed, inclusive of the interest, was not unlawful and void under Cl. 2, § 23 of Act IX. of 1872; and that the mistaken belief of both parties to the agreement that interest could be recovered by proceedings in execution, was not a mistake of fact rendering the agreement voidable under § 20 of that Act. In a written agreement by a debtor to pay his debt by instalments securing the payment by a mortgage of land, the amount of the debt was erroneously stated to be greater than it actually was. In a suit on the agreement :—*Held*, that such an error was ground for reforming the account, but not for setting aside the agreement. SETH GOKUL DASS GOPAL DASS *v.* MURLI...**L. Rep. 5 I. A. 78, 1878 ; I. L. Rep. 3 Cal. 602 ; 2 Cal. Rep. 156.**

S. C. under **Interest. 11.**

6.——*Act IX. of* 1872, § 25.—*Consideration—Void Contract.*] While certain *hundis* were running, the drawer having become bankrupt, the acceptor gave the holder a mortgage on certain property as security for the payment of the *hundis* in the event of their dishonour. In a suit on the mortgage deed by the holder, the *hundis* being dishonoured :—*Held*, that the mortgage was void under the provisions of § 25 of the Contract Act, there being no consideration for it : for even assuming that the defendant had received any portion of the *hundis* when discounted, and was liable on them, neither that antecedent benefit nor the existing liability constituted a consideration as defined in the Contract Act, and no act, abstinence, or promise on the part of the holder, appeared which would constitute a consideration. MANNA LAL *v.* BANK OF BENGAL. *Turner* and *Spankie*, JJ...**I. L. Rep. 1 All. 309, 1876.**

Digitized by Google

CONTRACT—*contd.*

7.—— *Act IX. of* 1872, § 28—*Agreement not to appeal.*] The defendant, pending proceedings in execution of a decree obtained against him by the plaintiffs, entered into an agreement with them not to appeal against the decree if they would give him until a certain date to satisfy it. The agreement having been notified to the Court, proceedings in execution were accordingly stayed. The defendant, contrary to the terms of the agreement, appealed:—*Held*, that § 28 of the Contract Act IX. of 1872 did not apply to the case, and that the agreement not to appeal was not prohibited by the language or spirit of the Contract Act, and that the Appellate Court was bound by the rules of justice, equity and good conscience to give effect to it, and to refuse to allow the defendant to proceed with the appeal. ANANT DAS *v.* ASHBURNER & Co... **I. L. Rep. 1 All. 267, 1876, F. B.**

8.—— *Act IX. of* 1872, § 28, Exception 1—*Agreement to refer to Arbitration—Specific Performance—Suit for Damages for Breach.*] A contract entered into by the plaintiff with the defendants contained a clause providing, in case of any dispute, for a reference to two arbitrators in England, "one to be appointed by the buyers, the other by the sellers' agents; such brokers' decision to be final." The contract contained no provision for making the submission to arbitration a rule of Court, so that 9 and 10 Wm. III., C. 15, and 3 and 4 Wm. IV., C. 42, did not apply. Matter of dispute arising, the defendants refused to appoint an arbitrator, and an award was made by the arbitrators appointed by the plaintiff. Previous to the making of the award, the plaintiffs, under the provisions of the Common Law Procedure Act of 1854, had the submission to arbitration made a rule of the Court of Common Pleas. In a suit in which the plaintiff's claim was for damages awarded by the arbitrators and incurred by the plaintiff in respect of the breach of contract:—*Held*, that the award was invalid. The effect of making an agreement to refer, a rule of Court under the provisions of the Common Law Procedure Act, 1854, is only to give more extended powers to the arbitrators in the matter of the reference and to render the parties liable as for contempt of Court for improper conduct in the reference. It does not at all deprive the parties of their Common Law right to revoke the authority of the arbitrators, at any time before the award, nor prevent a party to an agreement to refer, from declining to appoint an arbitrator.

Held also, that the contract was not within the scope of § 28 of Act IX. of 1872. To make an agreement conform to the exception 1 of that section, there must be an exclusion of the Courts in all respects except the matter which is the result of the arbitrators' award.

Contracts similar in character to those in *Scott* v. *Avery* (2 Jur. N. S. 815, S. C. 5 H. L. C. 811), and *Tredwen* v. *Holman*, (8 Jur. N. S. 1080, S. C. 1 H. & C. 72) which exclude the jurisdiction of the Courts until an award is made, are within the exception and are not illegal.

Quære—Whether it was intended by that exception to authorize the Court to entertain a suit for specific performance of an agreement to refer to arbitration. § 28 of Act IX. of 1872 does not forbid an action for damages for the breach of an agreement. KOEGLER *v.* THE CORINGA OIL CO. *Phear*, J **I. L. Rep. 1 Cal. 42, 1875**, affirmed on appeal, p. 466, where *Garth*, C.J., says, p. 468—"The defendant contends that the contract on which this suit is founded is one of the class described in the first exception of § 28 of the Contract Act, and consequently, that as the dispute which has arisen between himself and the plaintiffs remains undecided by arbitration, no suit can be brought upon it, except for specific performance of the agreement to refer. Certainly if this were so, the plaintiffs would be in an unfortunate position, because the defendant has distinctly refused to refer the dispute to arbitration; and as, according to the present state of the law, no suit will lie to compel him to refer, the defendant, if he is right in his contention, may, by his own breach of the contract, deprive the plaintiffs of any remedy whatever." But "the contract is not one of those described in the 28th Section of the Contract Act. That section does not apply to contracts which merely contain a provision *for referring disputes to arbitration*, but to those which wholly or partially prohibit the parties from having recourse to a Court of Law. The first exception in that section applies only to a class of contracts where (as in the cases of *Scott* v. *Avery* and *Tredwen* v. *Holman*, cited by *Phear*, J., *ubi supra*) the parties have agreed that no action shall be brought until some question of amount has first been decided by a reference."

Digitized by Google

CONTRACT—*contd.*

9. —— *Act IX. of* 1872, § 39—*Time of the Essence of the Contract—Right to rescind—Reciprocity of Obligation.*] Section 39 of the Contract Act only enacts what was the law in England, and the law in India, before the Act was passed, *viz*, that where a party to a contract refuses altogether to perform, or is disabled from performing, his part of it, the other side has a right to rescind it.

In a suit for damages for the non-delivery of linseed upon a contract to deliver 200 tons of linseed, delivery in all April and May, the terms of which as to payment were cash on delivery, part delivery had been made by the defendants between 1st and 8th May, and a sum of Rs. 1,000 had been paid on account by the plaintiffs. The balance due not having been paid, the defendants refused to deliver the remainder of the linseed. The refusal was contained in a letter of the 12th May, in which the defendants' attorney wrote as follows :—

"We are instructed to give you notice, that as you have failed to pay the price of the linseed delivered under Mr. Beer's contract in terms of the said contract, they (our clients) hereby cancel the said contract, and will make no further deliveries under it."

The plaintiffs answered, that they considered that the whole amount of linseed contracted to be delivered should have been delivered before the defendants were entitled to demand payment, but added that they were willing to waive that objection on adjustment of a sum which they claimed for excess refraction, and an allowance for some empty bags which they said defendants had used for purposes unconnected with the contract.

Further correspondence ensued, but the defendants insisted to the last, that on account of the non-payment by the plaintiffs of the balance due, they would make no further delivery.

The plaintiffs, accordingly, bought in other linseed against the defendants, and then sued for the loss they had sustained.

Held, that there was not such a refusal on the part of the plaintiffs to perform their part of the contract as to entitle the defendants to rescind under § 39 of the Contract Act.

Held, per Garth, C.J., that § 51 of the Contract Act was not applicable ; the reciprocal obligations were the delivery of the seed, and payment of the money on the occasion of each delivery.

CONTRACT—*contd.*

If the plaintiffs had been unwilling or unable to pay, the defendants would have been justified in refusing to deliver the seed ; but the defendants did deliver the seed ; the neglect to pay in this instance was after delivery when the reciprocity of obligation had ceased ; and there being no evidence that the plaintiffs were unwilling or unable to pay for the deliveries which the defendants refused to make, the neglect to pay for past deliveries was, under the circumstances, no reason for refusing to make all further deliveries ; and that time was not of the essence of the contract so as to bring the case within § 55 of the Act.

Per Markby, J., that § 51 would have applied if the defendants, when they came to make delivery, had insisted upon the contract being strictly performed, and payment being made upon delivery, and that if the defendants had so insisted, time might have been of the essence of the contract within the meaning of § 55. SOOLTAN CHUND *v.* SCHILLER. *Garth*, C.J., and *Markby*, J...**I. L. Rep. 4 Cal. 252 ; 3 Cal. Rep. 287, 1878.**

10. —— *Act IX. of* 1872, § 44—*Release to one of several Partners.*] In a suit for damages against a partnership firm, the plaintiffs compromised the suit with one of the defendants on the terms contained in the following document :—"Received from *G. M. S.* the sum of Rs. 9,500 in full discharge of all claims upon him as an individual and as a partner in the late firm of B. S. & Co., and we hereby undertake to immediately withdraw the suit against him and others in the High Court, instituted in connection with certain sales of jute to the firm of B. S. & Co. while he (*G. M. S.*) was a partner."

Held, that § 44 of the Indian Contract Act (IX. of 1872) applied. That section applies not only to a release to a man from his promise before breach, but also to a discharge after breach ; and the meaning generally of the section is that a release to one of several contractors, does not discharge the co-contractors. *A.* alone, therefore, was discharged.

Held also, that the other partners of the firm of B. S. & Co. not being parties to the agreement expressed in the receipt, by which the plaintiff undertook to withdraw his suit, there was no breach of faith in the continuance of the action against them. KIRTEE CHUNDER MITTER *v.* STRUTHERS. *Wilson*, J.....**I. L. Rep. 4 Cal. 336 ; 3 Cal. Rep. 546, 1878.**

Digitized by Google

CONTRACT—*contd.*

11. —— *Act IX. of* 1872, § 72—*Money paid under Mistake.*] A treasury officer, under the imposition of a gross fraud, paid money to the defendant, who was the innocent agent of the person who contrived the fraud. In paying the money the treasury officer neglected no reasonable precaution, nor was he in any way guilty of carelessness:—

Held, that § 72 of the Contract Act applied, and that the defendant was bound to repay the money received by him, and that he could not defend himself by the plea that he had paid it to his principal; nor did the circumstance that the principal was himself a servant of the plaintiff, and in the course of his employment obtained facilities for the commission of the fraud, relieve the defendant from his liability, it not being shown that the plaintiff in any way facilitated the fraud by the omission of any reasonable precautions. SHUGAN CHAND *v.* THE GOVERNMENT OF THE N. W. PROVINCES. *Turner*, C. J. (Offg.), and *Oldfield*, J...**I. L. Rep. 1 All. 79, 1875.**

12. —— *Act IX. of* 1872, § 74—*Promissory Note—Agreement to pay Interest at high rate on Default in Payment of Note—Penalty.*] The defendant and one *D.* gave to the plaintiff, a money-lender, on the 6th April 1875, a joint and several promissory note whereby they jointly and severally promised to pay the plaintiff on the 6th September 1875 "the sum of Rs. 400, for value received cash in hand, paid on signing this bond; should we neglect or fail to pay this amount on due date, then only shall it carry interest from and on due date to date of payment at the defaulting rate of 10 *per cent.* per *mensem.*" At the time of the making of the note the defendant and *D.* owed money to the plaintiff on other promissory notes, and a sum of Rs. 100 was deducted from the amount of the note of the 6th April, in respect of the amount due on one of such notes, which was given up, and for interest on three other notes. The plaintiff admitted that at the time of the execution of the note in suit he deducted Rs. 125 on account of interest in advance for five months on the amount thereof, and the balance, Rs. 175, was paid to *D.*, who died before the note became due. It appeared that the defendant did not read the note when he signed it. In a suit brought to recover Rs. 400 as principal and Rs. 400 as interest alleged to be due on the note on default being made in payment:—

CONTRACT—*contd.*

Held, that the contract to pay interest at 10 per cent. per mensem, if the principal sum were not paid on the due date was not in the nature of a penalty, notwithstanding that that rate of interest was called, in the note, "a defaulting rate." It was not a case in which a certain sum is agreed to be paid on a breach of contract, and § 74 of the Contract Act, therefore, did not apply.

Held also, that looking at the true nature of the transaction, the note contained a false statement of the consideration, which amounted only to Rs. 275; and considering that there was nothing to show that the defendant understood the real nature of the transaction; that the rate of interest was exorbitant, and the consideration grossly inadequate, the transaction was not one which ought to be enforced by a Court of Equity. MACKINTOSH *v.* HUNT. *Garth*, C.J., and *Macpherson*, J...**I. L. Rep. 2 Cal. 202, 1877.**

13.—— *Act IX. of* 1872, § 74—*Unconscionable Bargain.*] The plaintiff sued to recover Rs. 643-10-6, the value of 1,230 paras of paddy, due under an account dated the 8th of September 1876. The account, written on a *cadjan*, was for Rs. 315 payable with interest at 12 per cent. within fifteen days, and in default the plaintiff was to be paid, on the 14th of November 1876, paddy for the amount due calculated at the rate of 4 annas 7 pies per para. Immediately after the execution of this agreement the price of rice rose, the defendant did not pay within the fifteen days, and in the plaint the price of rice was calculated at 8 annas per para:—

Held, that the bargain was unconscionable. Under the Contract Act, § 74, in a case falling within its terms, only reasonable compensation could be given, which in the present case would be interest at a somewhat high rate. The contract in effect was that, if the principal with interest at 12 per cent. were not paid on the 22nd of September, double the amount should be payable on the 15th of November. Such a contract a Court of Equity would not enforce. VENKITTARAMA PATTAR *v.* KAMBANATH KESHAVA MEMON. *Morgan*, C.J., and *Kindersley*, J., **I. L. Rep. 1 Mad. 349, 1877.**

14.——*Act IX. of* 1872, § 127—*Surety—Bond Consideration—Special Appeal—Evidence.*] The plaintiff advanced to one *K.* a sum of money on a bond hypothecating certain property, and which

Digitized by Google

CONTRACT—*contd.*

contained the following clause:—"I, *M.* (the defendant), do hereby declare that if the money due to the creditor should not be received from the property of *K.*, I, the surety, shall pay the money out of my pocket to the creditor." The defendant did not sign this bond, but two days after its date, and after the money had been advanced to *K.*, the defendant executed a guarantee or surety bond to the plaintiff to secure the repayment of the money advanced to *K.*, the plaintiff not promising to do anything, nor doing anything, for the benefit of *K.*:—

Held, on a consideration of the evidence, (which the High Court in special appeal was entitled and bound to consider, for the sake of explanation, and the possible clearing up of doubts as to the true position of the surety), that the defendant acted as surety not on behalf of the principal debtor, but for the benefit of the plaintiff alone, who agreed to do nothing and promised nothing in return, and therefore that the security bond was without consideration, and void under § 127 of Act IX. of 1872. NANAK RAM *v.* MEHIN LAL. *Stuart*, C.J., and *Spankie*, J.

I. L. Rep. 1 All. 487, 1877.

S. C. Construction of Statute. 7.

15. —— *Act IX. of* 1872, § 178.—*Custody of Servant—Possession—Pledge of Goods—Trover.*] A servant entrusted by his mistress with the custody of goods, pledged them during her absence. The mistress sued in *trover* for the goods:—*Held*, that the custody of the servant was not "possession" within the meaning of § 178 of the Contract Act; but that even if he was to be regarded as having taken the articles into his possession for the purpose of pledging them, the case came within the second proviso to that section, and, therefore, that the action would lie. BIDDOMOYEE DABEE *v.* SITTARAM. *Garth*, C.J., and *Markby*, J...**I. L. Rep. 4 Cal. 497; 3 Cal. Rep. 398, 1878.**

16. —— *Contract of Affreightment—Condition precedent, "after two Country Voyages."*] When a shipowner has contracted to give a certain notice to a charterer, or to do any other act, with a view to inform the charterer when the ship will be ready, the charterer is not bound to ship his goods until the shipowner has given him that notice or done that act.

Held, therefore, in an action for not shipping goods under the following contract:—"*H. S.* to arrive after completing two country voyages

CONTRACT—*contd.*

for London on notice in May or June," it appearing that the plaintiffs had sent the vessel for one country voyage only, that the defendants were entitled to refuse to ship the goods. FLEMING *v.* KOEGLER. *Garth*, C. J., and *Markby*, J...**I. L. Rep. 4 Cal. 237**; *see* **2 Cal. Rep. 169; 3 Cal. Rep. 297, 1878.**

17. —— *Contract in Restraint of Trade—Application of Law of Place of Performance—* Lex Loci Contractus—*Contract Act IX. of* 1872, § 27—*English Law—Stamp—Agreement executed in England afterwards executed in India.*] The defendants by a contract in writing executed by them and one of the plaintiffs in England, and subsequently executed by the remaining plaintiffs in India, agreed with the plaintiffs to proceed to Madras to enter the plaintiffs' service, for a term of five years, terminable at any time, by either side, by giving four months' notice in writing, or by payment on the one side, or foregoing on the other, of three months' salary. The defendants covenanted that at the end of the five years, or on the sooner determination of the service, they "would not, within the distance of 800 miles from Madras, directly or indirectly, carry on or take service or enter into copartnership with any person or persons carrying on any business then being carried on, or at any time thereafter to be carried on, by the plaintiff, and further agreed to return to England whenever called upon to do so by the plaintiffs, who agreed to pay their passage money. The defendants accordingly went to Madras, and entered into the plaintiffs' service under the agreement. After about 2½ years the plaintiffs terminated the service in the manner contemplated by the agreement, and requested the defendants to return to England, offering to provide their passage; but the defendants refused to return to England, and set up and commenced to do business for themselves in Madras of the same nature as that carried on by the plaintiffs. In a suit by the plaintiffs against the defendants for damages for breach of the contract, and for a perpetual injunction restraining the defendants from carrying on, in, or within 800 miles from, Madras, any business carried on by the plaintiffs:—

Held, 1st, that the agreement was liable to Indian stamp duty, and was inadmissible in evidence until such duty and the prescribed penalty were paid.

Digitized by Google

CONTRACT—*contd.*

Held also, that the general rule that the validity of a contract is to be determined by the law of the place at which the contract is made, is subject to exceptions, one of such exceptions being that a contract made in one country for the purpose of contravening the laws of another country within that country cannot be enforced in the Courts of that other country. In the present case the contract was essentially one of service to be performed in India, and the breaches complained of could only have taken place in, or in the neighbourhood of, India; and the Courts of this country will not enforce a contract made abroad, to be performed in this country, contrary to the policy of the law of this country. And by § 27 of the Contract Act IX. of 1872, by which the present case was governed, the agreement sued on was void as being in restraint of trade. Even if the validity of the contract depended on the law of England, the limit of 800 miles was unreasonable, and the case was not one in which a narrower limit had also been mentioned, which might so far hold good.

Held also, that though the defendants were bound to go to England when required by the plaintiffs to do so, yet that the latter suffered no damage by the defendant's breach of this part of the contract, for if the defendants had not set up in business, the plaintiffs would have suffered no damage by their remaining in India. And it would only be by its operation improperly in restraint of trade that the agreement to proceed to England could benefit the plaintiffs. OAKES & Co. *v.* JACKSON. *Kindersley*, J...**I. L. Rep. 1 Mad. 134, 1876.**

17a. —— *Restraint of Trade—Void—Agreement.*] In a suit upon an agreement by which the defendants bound themselves to remain subject to the orders of the plaintiff the head of their caste, and not to carry on their profession of working in lead with the assistance of any other persons than their caste-people, and by which, in case of failure to perform the agreement, certain penalties were imposed:—

Held, that it would be against public policy to give effect to the contract, as the provision confining the parties to it to the members of their own caste for all assistance that might be required for carrying on their profession might become a very serious restraint on trade operations. VAITHELINGA *v.* SAMINADA. *Innes* and *Muttusamy Ayyar*, JJ.....**I. L. Rep. 2 Mad. 44, 1878.**

CONTRACT—*contd.*

18. —— *Unlawful Consideration—Void—Agreement.*] *F.* was required by a Magistrate under the Criminal Procedure Code, to furnish two sureties who should be responsible for his good behaviour each in a certain sum. *S.* agreed to become a surety on condition that *F.* would deposit with him the amount of the security. *F.* made the deposit, and *S.* became a security. The period for which *S.* was responsible for *F.*'s good conduct having expired without *F.* forfeiting the security, and *S.* refusing to return the deposit, *F.* sued *S.* to recover it:—*Held*, that as the consideration for the agreement defeated the object of the law, the consideration was unlawful, and *F.* was not entitled to relief. FATEH SINGH *v* SANWAL SINGH. *Turner*, C.J. (Offg.), and *Pearson*, J...**I. L. Rep. 1 All. 751, 1878.**

CONTRACT ACT IX. OF 1872.

—— § 13—Composition Deed—Resolution of creditors of Insolvent Firm to wind up voluntarily—Release inserted in Deed purporting to be drawn in accordance with said Resolution—Cancelling Deed.

See **Cancellation of Signature.**

THE ORIENTAL BANK CORPORATION *v.* JOHN FLEMING...**I. L. Rep. 3 Bom. 242.**

—— §§ 18 and 19—Misrepresentation—Breach of Duty — Negligence — Composition Deed, purporting to be in accordance with Resolution of Creditors of Insolvent Firm to wind up voluntarily the Business of the Firm—Introduction of Release.

See **Cancellation of Signature.**

THE ORIENTAL BANK CORPORATION *v.* JOHN FLEMING...**I. L. Rep. 3 Bom. 242.**

—— § 19.

See **Sale of Goods.**

SHOSHI MOHUN *v.* NOBO KRISHTO. **I. L. Rep. 4 Cal. 801.**

—— §§ 20 and 22—Mistake.

See **Contract. 5.**

SETH GOKUL *v.* MURLI...**L. R. 5 I. A. 78; I. L. Rep. 3 Cal. 602.**

—— § 25, Cl. 3—Consideration.

See **Kistbandy.**

HEERA LALL MOOKHOPADHAYA *v.* DHUNPUT SING...**I. L. Rep. 4 Cal. 500.**

Digitized by Google

CONTRACT ACT IX OF 1872—*contd.*

—— § 25—Consideration—Void Contract.

See **Contract. 6.**

MANNA LAL *v.* BANK OF BENGAL... **I. L. Rep. 1 All. 309.**

—— § 27.

See **Contract. 17. 17a.**

OAKES & Co. *v.* JACKSON...**I. L. Rep. 1 Mad. 134.**

—— § 28—Agreement not to appeal.

See **Contract. 7.**

ANANT DAS *v.* ASHBURNER...**I. L. Rep. 1. All. 267.**

—— 28—Exception 1.

See **Contract. 8.**

KOEGLER *v.* CORINGA OIL CO...**I. L. Rep. 1 Cal. 42, 466.**

—— § 37.

See **Alteration of Contract.**

EDE *v.* KANTO NATH SHAW...**I. L. Rep. 3 Cal. 220.**

—— § 39.

See **Contract. 9.**

SOOLTAN CHAND *v.* SCHILLER...**I. L. Rep. 4 Cal. 252; 3 Cal. Rep. 287.**

—— § 43.

See **Joint Contractors.**

HEMENDRO *v.* RAJINDROLALL...**I. L. Rep. 3 Cal. 353; 1 Cal. Rep. 488.**

—— § 44.

See **Contract. 10.**

KIRTEE CHUNDER *v.* STRUTHERS... **I. L. Rep. 4 Cal. 336; 3 Cal. Rep. 546.**

—— § 51—Reciprocity of Obligation—Right to Rescind.

See **Contract. 9.**

SOOLTAN CHAND *v.* SCHILLER...**I. L. Rep. 4 Cal. 252.**

—— § 55—Time of the Essence of a Contract.

See **Contract. 9.**

SOOLTAN CHAND *v.* SCHILLER...**I. L. Rep. 4 Cal. 252.**

—— § 65.

See **Arbitration. 2.**

KHETA MAL *v.* CHUNI LAL...**I. L. Rep. 2 All. 173.**

CONTRACT ACT IX. OF 1872—*contd.*

—— §§ 65, 68, 69.

See **Mortgage. 29.**

ABHASSEE *v.* MOHARANEE RAJROOP...**I. L. Rep. 4 Cal. 33.**

—— § 69—Mortgaged Property sold to several —Payment of Whole Debt by one—Contribution.

See **Contribution. 2.**

MOTHOORANATH *v.* KRISTOKUMAR. **I. L. Rep. 4 Cal. 369.**

—— § 72.

See **Contract. 11.**

SHUGAN CHAND *v.* GOVERNMENT. **I. L. Rep. 1 All. 79.**

—— § 74—

See **Contract. 12. 13.**

MACKINTOSH *v.* HUNT...**I. L. Rep. 2 Cal. 202.**

VAINKITARAMNA *v.* KAMBANATH... **I. L. Rep. 1 Mad. 149.**

—— § 76—Cashing Currency Note—Sale.

See **Government Currency Note.**

EMPRESS *v.* JOGESSUR MOCHI...**I. L. Rep. 3 Cal. 379.**

—— § 78.

See **Sale of Goods.**

SHOSHI MOHUN *v.* NOBO KRISHTO. **I. L. Rep. 4 Cal. 801.**

—— § 86.

See **Sale of Goods.**

SHOSHI MOHUN *v.* NOBO KRISHTO. **I. L. Rep. 4 Cal. 801.**

—— § 113, Illustration 3.

See **Sale of Goods.**

SHOSHI MOHUN *v.* NOBO KRISHTO. **I. L. Rep. 4 Cal. 801.**

—— § 127.

See **Contract. 14.**

NANAH *v.* MEHIN...**I. L. Rep. 1 All. 487.**

—— §§ 132, 134, 135, 139—Trust Deed in Favour of Creditors—Execution of, by Creditor—Eventual Remedies of Surety—Discharge of Surety.

See **Principal and Surety. 4.**

POGOSE *v.* BANK OF BENGAL...**I. L. Rep. 3 Cal. 174.**

Digitized by Google

CONTRACT ACT IX. OF 1872—*contd.*

—— §§ 151, 152—Carriers—Railway Company—Loss by Robbery of Goods carried.

See **Railway Company. 2.**

KUVERJI TULSIDAS *v.* THE G. I. P. RY. CO...**I. L. Rep. 3 Bom. 109**

—— § 178.

See **Contract. 15.**

BIDROMOYEE *v.* SITARAM...**I. L. Rep. 4 Cal. 497; 3 Cal. Rep. 398.**

See **Jurisdiction. 12.**

KARTIK CHURN *v.* GOPAL KISTO... **I. L. Rep. 3 Cal. 264.**

—— § 247—Analogy of—Applied to Ancestral Trade carried on for Benefit of Hindu Infant.

See **Hindu Law—Ancestral Trade.**

JOYKISTO *v.* NITTYANUND...**I. L. Rep. 3 Cal. 738.**

—— § 265—Suit for Dissolution of Partnership—Jurisdiction exists where Partners all reside, as well as at Place of Business.

See **Jurisdiction. 6.**

RAMASAMI *v.* THEREEVENGADASAMI.....**I. L. Rep. 1 Mad. 340.**

CONTRIBUTION.

See **Mortgage. 8.**

BHAGIRATH *v.* NAUBAT SINGH...**I. L. Rep. 2 All. 115.**

See **Set-off.**

UDAI SINGH *v.* JAGAN NATH...**I. L. Rep. 1 All. 135.**

—— Suit for.

See **Limitation. 60.**

FUCKERUDDEEN MAHOMED AHSAN *v.* MOHINA CHUNDER CHOWDRY...**I. L. Rep. 4 Cal. 529.**

—— Suit for—by Pattidar who has paid Revenue due on Co-Sharers' Shares.

See **Act XIX. of 1873, § 241.**

RAM DIAL *v.* GULAB SINGH...**I. L. Rep. 1 All. 26.**

1. —— *Suit for—Redemption of Mortgage.*] The purchaser of a share in a mortgaged estate, who has paid off the whole mortgage debt, in order to save the estate from foreclosure, can claim from each of the other mortgagors a contribution proportionate to his interest in the property, but he cannot claim in the lump sum from the other mortgagors collectively, the whole amount paid by him.

Where such a claim had been decreed, and some only of the defendants appealed, the decree was reversed as regards those defendants who had not appealed, as well as against those who had, the ground being common to all. HIRA CHUND *v.* ABDAL. *Turner* and *Spankie*, JJ. **I. L. Rep. 1 All. 455, 1877.**

2. —— *Mortgaged Property, Sale of, to different persons—Payment of Debt by one—Contribution—Contract Act IX. of* 1872, § 69.] *A.* and *B.* respectively, at different dates, purchased portions of a property on which there was a mortgage. On the mortgagee obtaining a decree against the property, *B.* paid off the entire debt and brought a suit against *A.* for contribution :—

Held, that he was entitled to recover, although in the deed of sale to *B.* there was an undertaking by *B.* that he would discharge all the liabilities of the mortgagor, including the mortgage on the property. Section 69 of the Indian Contract Act (IX. of 1872) includes not only cases of personal liability, but all liabilities to payments for which owners of lands are indirectly liable, those liabilities being imposed upon land held by them. MOTHOORANATH CHUTTOPADHAYA *v.* KRISTOKUMAR GHOSE. *Markby* and *Prinsep*, JJ.....**I. L. Rep. 4 Cal. 369, 1878.**

CONVERSION—Measure of Damages.

See **Damages. 4.**

BURMAH TRADING COMPANY *v.* MIRZA MAHOMED...**L. Rep. 5 I. A. 130; I. L. Rep. 4 Cal. 116.**

CONVERSION OF COINAGE.

See **Enhancement of Rent. 3.**

MEER MAHOMED HOSSEIN *v.* FORBES...**L. Rep. 2 I. A. 1.**

CONVICTED PERSON—is not an "Accused Person"—Bail.

See **Criminal Procedure Code, Act X. of 1872, § 390.**

REG. *v.* THAKUR PARSHAD...**I. L. Rep. 1 All. 151.**

CONVICTION OF CULPABLE HOMICIDE ON CHARGE OF MURDER.

See **Appeal—Criminal. 4.**

EMPRESS *v.* JUDOONATH GANGOOLY. **I. L. Rep. 2 Cal. 278.**

Digitized by Google

CONVICTION ON SEVERAL CHARGES.

—— Combined Sentence Measures—Right of Appeal.

See **Appeal—Criminal. 3.**

REG. *v.* RAMA BHIVGOWDA...**I. L. Rep. 1 Bom. 223.**

—— Offence made up of Parts—Sentence.

See **Criminal Procedure Code, Act X. of 1872, § 454.**

EMPRESS *v.* BUDH SINGH...**I. L. Rep. 2 All. 101.**

1. —— *Separate Sentences — Housebreaking —Theft.*] There should be either one sentence for both offences in a case of conviction of house-breaking by night in order to commit theft, and theft, not exceeding that which may be given by the law for the graver offence, or separate sentences for each offence, provided that in the aggregate the punishment awarded does not exceed that which may be given for the graver offence. REG. *v.* TUKAYA TAMANA. **I. L. Rep. 1 Bom. 214, 1876, F.B.**

2. —— *Penal Code*, §§ 192, 193, 414—*Fabricating False Evidence—Voluntarily Assisting in Concealing Stolen Property—Separate Offences.*] Where the petitioner was convicted of having voluntarily assisted in concealing stolen railway pins in the house and field of a certain person with a view to having such innocent person punished as the offender:—

Held, that the Magistrate was right in convicting and punishing the petitioner for the two separate offences of fabricating false evidence for use in a judicial proceeding, under § 193 of the Penal Code, and of voluntarily assisting in concealing stolen property, under § 414 of the Penal Code. EMPRESS *v.* RAMESHAR RAI. *Spankie*, J.....**I. L. Rep. 1 All. 379, 1877.**

3. —— *Exposure of Child—Culpable Homicide—Penal Code*, §§ 304, 317—*Separate Sentences.*] Where a mother abandoned her infant child, with the intention of wholly abandoning it, and knowing that such abandonment would be likely to cause its death, and the child died in consequence of the abandonment:—

Held, that she could not be convicted and punished under § 304 and also under § 317 of the Penal Code, but under § 304 only. So long as the child remained alive, the charge under § 317 of "exposure with intent to abandon" could have been sustained, and had the accused been tried before the death of the child, for that offence, she could rightly have been convicted, and such conviction would have been no bar in the event of the child's death to a prosecution for culpable homicide. But the child having died before the prosecution of the accused, the offence under § 317 became absorbed and merged in the more serious charge under § 304; and the maxim *Nemo debet bis puniri pro uno delicto* applied, and separate sentences could no more be passed than they could for murder and wounding with intent to murder, where the death of the party attacked had taken place, and the death and wounding involved one and the same transaction. EMPRESS *v.* BANNI. *Straight*, J.....**I. L. Rep. 2 All. 349, 1879.**

CONVICTION ON SEVERAL CHARGES—*contd.*

COPARCENER—Pre-emption—No Right of —as against a.

See **Mahomedan Law—Pre-emption. 1.**

LALLA NOWBUT *v.* LALLA JEWAN... **I. L. Rep. 4 Cal. 831.**

—— Unrecorded—Purchase by—at Sale for Arrears of Revenue—Existing Encumbrances.

See **Act XI. of 1859, § 53.**

ABDOOL BARI *v.* RAMDAS COONDOO...**I. L. Rep. 4 Cal. 607.**

COPY OF JUDGMENT—Time necessary to obtain—not excluded in computing Period of Limitation for Leave to appeal to the Privy Council.

See **Limitation. 90.**

JAWAHIR LAL *v.* NARAIN DAS...**I. L. Rep. 1 All. 644.**

See **Letters Patent—Allahabad—Cl. 10. 2.**

FAZUL MUHAMAD *v.* PHUL KUAR. **I. L. Rep. 2 All. 192.**

CORRESPONDENCE—Contract constituted by.

See **Contract. 2.**

See **Registration. 10.**

PORT CANNING CO. *v.* SMITH...**L. Rep. 1 I. A. 124; L. Rep. 5 P. C. 114.**

Digitized by Google

CORROBORATION OF AN ACCOMPLICE.

See **Evidence. 9. 9a. 10. 11. 11a. 12. 12a.**

CO-SHARERS OF LAND—Suit by One of Several—to Eject.

See **Right of Occupancy. 6.**

BOLLYE SATEE *v.* AKRAM ALLY... **I. L. Rep. 4 Cal. 961.**

See **Co-Inamdars.**

KRISHNARAV *v.* GOVIND .....**I. L. Rep. 3 Bom. 25, n.**

—— Suit by One of Several—for Enhancement of Rent.

See **Enhancement of Rent. 79.**

DOORGA PROSAD MYTSE *v.* JOYNARAIN HUZRAH...**I. L. Rep. 2 Cal. 474.**

BALAJI *v.* GOPAL.....**I. L. Rep. 3 Bom. 23.**

See **Co-Sharers of Land. 4.**

—— Suit by—in Mahal against Heir of Deceased Lambardar for Share of Profits.

See **Act XVIII. of 1873, § 93. 2.**

BHIKHAN KHAN *v.* RATAN KUAR... **I. L. Rep. 1 All. 512.**

—— Suit by—of Mahal for Share of Profits—Limitation.

See **Act XVIII. of 1873, § 94.**

BHIKHAN KHAN *v.* RATAN KUAR... **I. L. Rep. 1 All. 512.**

1.—— *Arrangement for Separate Payment of Rent—Separate Suits for Arrears of Rent—Suit for* Kabulaiyat—*Enhancement.*] Where it has been arranged between the co-sharers of an estate and their tenant, that he shall pay each co-sharer his proportionate share of the entire rent, each co-sharer may bring a separate suit against the tenant for such proportionate share.

In the absence of such an arrangement no such suit can be maintained.

Such an arrangement may be evidenced either by direct proof, or by usage from which its existence may be presumed, and is perfectly consistent with the continuance of the original lease of the entire tenure.

But an arrangement of this nature will not enable one co-sharer to sue the tenant for a *kabulaiyat*, for a co-sharer who obtains a *kabulaiyat* is bound at the request of the tenant to give him a *pottah* upon the same terms, and

CO-SHARERS OF LAND—*contd.*

the grant and acceptance of a binding lease of any separate share cannot exist contemporaneously with the original lease of the entire tenure.

The cancellation of the original lease ought not to be presumed from the mere fact of a separate payment of rent to one or more of the co-sharers.

One co-sharer cannot enhance the rent of his share, such an enhancement being inconsistent with the continuance of the lease of the entire tenure. DOORGA PRASHAD MYTSE *v.* JOYNARAIN HAZRA.....**I. L. Rep. 4 Cal. 96, 1878, F. B.**

GUNI MAHOMED *v.* MORAN...**Ibid.**

2. —— *Rent paid jointly to Co-Sharers — Inability of one Co-Sharer to sue for his Share separately.*] Where a tenant, who held under co-sharers, to whom he had been accustomed to pay his rent jointly, was sued by one of the co-sharers, the others being made defendants to the suit, and pleaded that he had paid the rent to his co-defendants, who admitted the receipt thereof;—*Held*, that the suit should be dismissed; the remedy of the co-sharer who has not received his share of the rent is against his co-sharers, and not against the tenant. AHAMUDIN *v.* GRISH CHUNDER SHAKMUT. *Jackson*, C.J. (Offg.), and *Markby*, J...**I. L. Rep. 4 Cal. 350, 1878.**

3. —— *Suit by one of several—for Separate Share of Rent—Unpaid Balance of Rent—Parties.*] A co-sharer, alleging that a tenant, in collusion with the rest of the co-sharers in the estate, had failed to pay the rent for two years, brought a suit for the recovery of his share of the arrears of rent, making the tenant and all the colluding shareholders defendants in the suit. It was admitted that the plaintiff and his co-sharers, the *pro formâ* defendants, had together granted the lease, and had hitherto jointly received the rent.

The Court of first instance thought there was sufficient evidence to show collusion between the first defendant and the *pro formâ* defendants and held that the suit was maintainable. The lower Appellate Court held that there was no proof of collusion; but was further of opinion that even if collusion had been established, the proper remedy was a suit for damages against the colluding parties, and not for rent:—

Digitized by Google

CO-SHARERS OF LAND—*contd.*

Held, that the decision of the lower Appellate Court was wrong: for that (1)—following *Doorga Churn Surma* v. *Jampa Dassee*, 12 B. L. Rep. 289; 21 W. Rep. 46—a suit by a co-sharer for arrears of rent which he had heretofore received in proportion to his share, but which he alleges now to be withheld by the ryot in collusion with the other co-sharers who were also made defendants, is maintainable;—and (2) that a co-sharer can maintain a suit, to which his co-sharers as well as the tenant are parties defendants, for his share of the rent, where the amount for which the suit is brought in fact represents the unpaid balance of rent, to the whole of which the plaintiff is himself entitled. JADU DASS v. SUTHERLAND. *Jackson*, and *Tottenham*, JJ....**I. L. Rep. 4 Cal. 556; 3 Cal. Rep. 223, 1878.**

4. —— *Suit by Co-Sharers of Land — Enhanced Rent — Non-Joinder of Parties — Act IX. of* 1871, § 22.] In a suit to recover rent at an enhanced rate brought by two of four brothers, joint and undivided owners of the tenure, the other two brothers, on an objection taken by the defendants that they ought to have been parties to the suit, presented a petition signifying their assent to the suit. This application, however, was made after the period of limitation prescribed for such a suit had expired:—

Held, by *Markby*, J.,—That though the rights of such added parties were absolutely barred, yet the Court could proceed to adjudicate upon and declare the rights of the remaining plaintiffs who had originally filed the suit, and that, as the claim for rent was indivisible, the decree in their favour should be for the whole amount.

By *Prinsep*, J.,—That the objection as to the defect of parties after the case had passed through two Courts, was not one affecting the merits of the case so as to be a ground of special appeal.

Semble—§ 22 of Act IX. of 1871 does not apply to cases of joint claims. BOYDONATH BAG v. GRISH CHUNDER ROY...**I. L. Rep. 3 Cal. 26, 1877.** Dissented from in **I. L. Rep. 6 Cal. 815.**

See **Vol. 2; Col. 1028.**

CO-SHARER IN PATTIDARI ESTATE—Right of Pre-emption of.

See **Pre-emption. 1. 2.**

NARAIN SINGH v. MUHAMMED FARUCK...**I. L. Rep. 1 All. 277.**

FARZAND ALI v. ALIMULLAH...**I. L. Rep. 1 All. 272.**

CO-SHARERS OF PATNI TALUK—*Liability of — Voluntary Payment — Right of Mortgagee to prevent Sale of Mortgaged Property for Arrears of Zemindari Rent.*] Two out of certain co-sharers in a *patni taluk* executed a mortgage bond with the object of paying off a quota of the rent due on the estate. In a suit brought on the bond, to which all the co-sharers were defendants:—*Held*, that the liability under the bond, was limited to those co-sharers who had signed the bond, and to such other co-sharers as were present and might be taken to have acquiesced in the execution of the bond and in the contracting of the loan, and for whose benefit in fact the loan was taken.

The mortgagee of the *patni taluk* having paid certain moneys to prevent the sale of the mortgaged property for arrears of zemindari rent:—*Held*, that the mortgagee had an interest to protect; he had not merely a right to recover the amount of his advance, but held a mortgage to a certain extent over the property, which, in the event of non-payment of the sum advanced, might have been sold for it;—the payments, therefore, made by the mortgagee to prevent the sale of the taluk, under the *patni* sale law, were not voluntary payments, but constituted a good charge on the property as against all the persons interested therein for the amount so paid; and it made no difference for this purpose whether the suit on the bond was followed by a decree as against all the defendants sued, or against a part of them. In the latter case, the mortgagee would stand in the same position as if he had a mortgage of an undefined share of the property, and that interest would authorize him to make the payments he did.

The circumstance that a mortgagee has protected himself by a stipulation in the mortgage bond, so that the omission to pay the Government revenue or the *patni* rent should not involve a loss of his advance, will not alter the mortgagee's position, or make such payments by him voluntary payments.

MOHESH CHUNDER BANERJEE v. RAM PURSONO CHOWDRY ... **I. L. Rep. 4 Cal. 539, 1878.**

See **Right to recover Government Assessment paid during Wrongful Possession.**

TILLUCK CHUND v. SOUDAMINI DASI ..... **I. L. Rep. 4 Cal. 566.**

Digitized by Google

CO-SHARERS OF PATNI TALUK—*contd.*

See **Sale in Execution of Decree. 17.**
RAM TILUCK SINGH *v.* BISSESWAR LALL SAHOO... **L. Rep. 2. I. A. 131.**

See **Setting aside Sale of Superior Tenure, Effect of.**
SREENARAIN BAGCHEE *v.* SMITH... **I. L. Rep. 4 Cal. 807.**

CO-SHARER OF UNDIVIDED ESTATE—Assignee of—Rights of.

See **Mortgage. 9.**
BYJNATH *v.* RAMOODEEN...**L. Rep. 1 I. A. 106; 21 W. Rep. 233.**

See **Partition by the Revenue Authorities.**
SHARAT CHANDER *v.* HURGOBINDO. **I. L. Rep. 4 Cal. 510.**

COSTS—Appeal as to.

See **Costs. 1. 2.**

—— Application under Rule 149 of Common Law Rules of Supreme Court to compel Defaulting Client to pay.

See **Attorney and Client. 1.**
ABA ISMAIL *v.* ABA THARA... **I. L. Rep. 1 Bom. 253.**

—— of Application for Letters of Administration.

See **Costs. 3.**

—— Bill of—Limitation.

See **Limitation. 57.**
HEARN *v.* BAPU NAIKIN..... **I. L. Rep. 1 Bom. 505.**

—— Bill of—Right to tax after Declining.

See **Attorney and Client. 2.**
MONOHUR DAS *v.* ROMANATH LAW. **I. L. Rep. 3 Cal. 473.**

—— Deposit of—Power to enlarge Time.

See **Act VI. of 1874, § 11.**
SOORJMUKHI KOER ... **I. L. Rep. 2 Cal. 272.**

—— Interest on—Attorney's Right to

See **Attorney and Client. 2.**
MONOHUR DOSS *v.* ROMANATH... **I. L. Rep. 3 Cal. 473.**

—— Interest on —not mentioned in Decree.

See **Interest. 10.**
MAHTAB CHUNDER *v.* RAM LALL ... **I. L. Rep. 3 Cal. 351.**

COSTS—*contd.*

—— Interest on—cannot be given in Execution, unless decreed.

See **Interest. 9.**
FORESTER *v.* THE SECRETARY OF STATE FOR INDIA IN COUNCIL. **L. Rep. 4 I. A. 137; I. L. Rep. 3 Cal. 161.**

—— Interest on—paid under Decree subsequently reversed.

See **Refund of Costs paid under Decree subsequently reversed.**
DORAB ALLY KHAN *v.* ABDOOL AZEEZ.....**I. L. Rep. 4 Cal. 229.**

—— Libel.

See **Libel.**
SHEPHERD *v.* THE TRUSTEES OF THE PORT OF BOMBAY...**I. L. Rep. 1 Bom. 477.**

—— Lien for—Solicitor's.

See **Mortgage. 38.**
BRIJNATH *v.* JUGGERNATH...**I. L. Rep. 4 Cal. 742.**

—— Material Misstatement in Petition for Special Leave to Appeal.

See **Bengal Regulation VIII. of 1819, § 8, Cl. 2.**
RAM SABUK *v.* MONMOHINI...**L. Rep. 2 I. A. 71.**

—— Non-Liability of Stranger to the Record to—in Absence of Malice and Want of Probable Cause.

See **Champerty. 2.**
RAM COOMAR *v.* CHUNDER KANTO. **L. Rep. 4 I. A. 23; I L. Rep. 2 Cal. 233.**

—— As between Party and Party—Pre-emption Suit—Pleader's Fees.

See **Pleader's Fees.**
DEBI SINGH *v.* BHUP SINGH...**I. L. Rep. 1 All. 709.**

—— Refund of—paid under Decree subsequently reversed.

See **Refund of Costs paid under Decree subsequently reversed.**
DORAB ALLY KHAN *v.* ABDOOL AZEEZ.....**I. L. Rep. 4 Cal. 229.**

Digitized by Google

COSTS—*contd.*

—— Security for—Attorney's Right to contract for.
See **Attorney and Client. 2.**
MONOHUR DASS *v.* ROMANAUTH LAW...**I. L. Rep. 3 Cal. 473.**

—— Security for—of Appeal—Poverty no ground for Ordering.
See **Security for Costs. 2.**
MANEKJI *v.* GOOLBAI...**I. L. Rep. 3 Bom. 241.**

—— Security for—Extending Time.
See **Security for Costs. 1.**
HAIDRI BAI *v.* E. I. RAILWAY CO. **I. L. Rep. 1 All. 687.**

—— Security for—Practice—Residence.
See **Civil Procedure Code, Act X. of 1877, § 380.**
MAHOMED SHUFFI *v.* LALDIN ABDULLA...**I. L. Rep. 3 Bom. 227.**

—— Security Bond for—Enforcing Bond against Surety in Execution Proceedings.
See **Security Bond.**
CHUTTERDHAREE *v.* RAMBELASHEE. **I. L. Rep. 3 Cal. 318.**

—— Set-off of—against Mortgage Money.
See **Mortgage. 38.**
BRIJNATH *v.* JUGGERNATH...**I. L. Rep. 4 Cal. 742.**

—— Suit for.
See **Right to Sue. 11. 12.**
KABIR *v.* MAHADU...**I. L. Rep. 2 Bom. 360.**
PRANSHANKAR *v.* GOVINDLAL...**I. L. Rep. 1 Bom. 467.**

—— Taxation of—Right of Client to—after Refusal of Offer to tax and seven years' Delay.
See **Attorney and Client. 2.**
MONOHUR DOSS *v.* ROMONAUTH LAW...**I. L. Rep. 3 Cal. 473.**

—— Tender.
See **Tender. 2.**
CHUNDER CAUNT *v* JODOONATH... **I. L. Rep. 3 Cal. 469.**

—— Tender amounting to Payment—Cheque in Payment of Debt.
See **Tender. 1.**
BOYLE CHUND SING *v.* MAULARD. **I. L. Rep. 4 Cal. 572.**

COSTS—*contd.*

—— Wife's—of Appeal in Suit for Divorce.
See **Divorce. 3.**
FOWLE *v.* FOWLE...**I. L. Rep. 4 Cal. 260.**

1. —— *Mortgagee — Usurious Contract—Discretion.*] The general rule is that a mortgagee is entitled to the costs of enforcing his security, but this not being prescribed by any express regulation, where the Court, in consideration of his usurious bargain, declines to award them wholly or in part, the High Court will not interfere. CARVALHO *v.* NURBIBI. *West* and *Pinhey*, JJ...**I. L. Rep. 3 Bom. 202, 1879.**

2. ——*Special Appeal—Order in Discretion of Court.*] Where, in a suit for defamation, a decree was given for the plaintiff for nominal damages, and the Judge considering the suit to be a vexatious one, the defendant having already been convicted and fined on a prosecution by the plaintiff for the defamation, ordered the plaintiff to pay the defendant's costs :—

Held, that the order of the Court below as to costs, was within its discretion and was not illegal, and therefore that no special appeal would lie ; the rule laid down by the Full Bench in *Girdhari Lal Ray* v. *Sundar Bibi* (Bengal L. Rep., Sup. Vol., 496) being that the High Court can, in regular appeal, review the exercise of the discretion of the lower Court as to the award of costs; but that in Special Appeal the High Court cannot interefere unless the order made as to costs was illegal.

In a suit for defamation, if the Court thinks that though the words complained of may have been spoken by the defendant, yet that the plaintiff is not entitled to damages (he having already prosecuted the defendant for the defamation), the Court is not bound to award nominal damages, but may dismiss the suit. FUTEE PAROOEE *v.* MOHENDER NATH MOZOOMDAR. *Markby* and *Mitter*, JJ...**I. L. Rep. 1 Cal. 385, 1876.**

3. —— *Costs of Application for Letters of Administration.*] An applicant for letters of administration to the estate of a widow, having concealed the existence of claims, of which he was aware, of the relatives of the deceased husband of the widow, on the application being dismissed, was ordered to pay the costs of the application, and of the caveats entered by some

Digitized by Google

COSTS—*contd.*

of the relatives of the deceased husband. JAIKISONDAS GOPALDAS *v.* HARKISONDAS TULLOCHANDAS. *Green*, J..I. L. Rep. 2 Bom. 9, 1876.

COTTON—Adulteration of—in Foreign Territory—Possession of Adulterated—in British Territory—Jurisdiction.

See **Bombay Cotton Frauds Act VII. 1878, §§ 6 and 14.**

IMPX. *v.* KHIMCHAND NARAYAN... I. L. Rep. 3 Bom. 384.

—— Possession of Adulterated.

See **Bombay Cotton Frauds Act IX. of 1863, § 2.**

REG. *v.* HANMANN GAVDA...I. L. Rep. 1 Bom. 228.

COUNSEL—Right of—to be heard on a Reference under § 296 of the Criminal Procedure Code.

See **Criminal Procedure Code, Act X. of 1872, § 296.**

REG. *v.* DEVAMA ... I. L. Rep. 1 Bom. 64.

COURT OF CO-ORDINATE JURISDICTION—Injunction to restrain Execution of Decree by.

See **Injunction. 2.**

DHURONIDHUR SEN *v.* THE AGRA BANK...I. L. Rep. 4 Cal. 380.

COURT FEES—Appeal from Order fixing—on Plaint.

See **Court Fees. 4. 5. 6.**

—— Attachment—Suit to Set Aside.

See **Court Fees. 3.**

—— Declaratory Decree, Suit for—Consequential Relief.

See **Court Fees. 1. 10. 11.**

—— Distinct Subjects—Suit Embracing.

See **Court Fees. 7.**

—— Pauper Suit—Prerogative of Crown.

See **Civil Procedure Code, Act VIII. of 1859, § 309, 1. 2.**

GUNPUT *v.* COLLECTOR OF KANARA. I. L. Rep. 1 Bom. 7.

GULZARI *v.* COLLECTOR OF BAREILLY...I. L. Rep. 1 All. 596.

COURT FEES—*contd.*

—— Prerogative Right of Crown to Execution Sale Proceeds of Property of Defendant in Pauper Suit.

See **Prerogative of the Crown.**

COLLECTOR OF MORADABAD *v.* MUHAMMAD.....I. L. Rep. 2 All. 196.

—— On Suit for Declaratory Decree—Consequential Relief.

See **Court Fees. 1. 10. 11.**

—— Probate.

See **Court Fees. 8. 9.**

—— Revision of Valuation in Plaint.

See **Court Fees. 2.**

—— In Suit Embracing two or more Distinct Subjects.

See **Court Fees. 7.**

CHAMAILI RANI *v.* RAM DAI...I. L. Rep. 1 All. 552.

—— On suit to Establish his Right by Person against whom Order is passed under Act VIII. of 1859, § 246.

See **Court Fees. 11.**

CHUNIA *v.* RAMDIAL...I. L. Rep. 1 All. 360.

—— On Suit to Set aside an Attachment.

See **Court Fees. 3.**

COLLECTOR OF THANA *v.* DADABHAI...I. L. Rep. 1 Bom. 352.

—— Valuation of Suit for purposes of—and for Jurisdiction.

See **Jurisdiction. 15. 19. 20.**

KALIAN *v.* NAWAL...I. L. Rep. 1 All. 620.

BAI MAKHOR *v.* BULAKHI...I. L. Rep. 1 Bom. 538.

KALU *v.* VISHRAM...I. L. Rep. 1 Bom. 543.

1.——*On Suit for a Declaration of Right, and to set aside an order under § 246, Act VIII. of 1859, disallowing a claim to the property attached—Act VII. of 1870, § 8, Cl. iii., and Schedule II., Art. 17—Consequential Relief.*] *Held*, that a suit for a declaration of the plaintiffs' proprietary right to certain property attached in execution of a decree while in the possession of the plaintiff, and for the cancelment of the order of the Court executing the decree, made under § 246 of Act VIII. of 1859, disallowing his claim to the property, could be brought on a stamp of

Digitized by Google

COURT FEES—*contd.*

Rs. 20; *i.e.*, Rs. 10 for each claim; and that it was not imperative that the Court fee should be according to the value of property. GULZARI MAL *v.* JADAUN RAI. *Spankie* and *Oldfield*, JJ... **I. L. Rep. 2 All. 63, 1878.**

2. —— *Act VII. of* 1870, § 7, Cl. iv.—*Revision by Judge of Valuation of Plaint.*] Assuming that the concluding passage in Cl. iv. of § 7 of Act VII. of 1870 is too express to admit of a limitation of the Judge's power and leaves him the right to revise the valuation placed on suits by a plaintiff under Cl. iv., still, generally, it would not be desirable that the Judge should enhance the valuation on the reception of the plaint. In most cases he could only make a conjecture as to the value of the relief sought, and would be quite as likely to be wrong as right. Under § 7, Cl. iv., the fee payable is to be according to the amount at which the relief sought is valued in the plaint, and not the value of the subject-matter of the claim. MONOHAR GANESH *v.* BAWA RAMCHARANDAS. *Westropp*, C. J., and *Melvill*, J. **I. L. Rep. 2 Bom. 219, 1877.**

S. C. under **6** and **10.**

3. —— *Act VII. of* 1870, §§ 7-8, Cl. viii.—*Suit to set aside an Attachment—Value.*] The meaning of Cl. viii. of § 7 of Act VII. of 1870 is, that a person suing to set aside an attachment on land, shall in no case be called upon to pay a higher fee than he would have to pay if he were suing for possession. Accordingly, in a suit to set aside a summary attachment under § 48 of Bombay Act I. of 1865, placed by the Collector on land held on a settlement for a period not exceeding 30 years, the value was held to be five times the assessment, and the stamp duty calculated upon it, irrespective of the actual market value, or the amount for which the land was attached. THE COLLECTOR OF THANA *v.* DADABHAI BOMANJI. *Melvill* and *Kemball*, JJ...**I. L. Rep. 1 Bom. 352, 1876.**

4. —— *Act VII. of* 1870, § 12. *Appeal.*] Section 12 of the Court Fees' Act VII. of 1870 prohibits appeals on questions relating to valuation for the purposes of determining the amount of a fee, but does not prevent a Court of Appeal from determining whether or not consequential relief is sought in a suit, so that it may determine under what class of cases the suit falls for the purpose of the Court Fees Act. CHUNIA *v.* RAMDIAL. *Pearson* and *Turner*, JJ... **I. L. Rep. 1 All. 360, 1877.**

S. C. under **11**, *infra.*

COURT FEES—*contd.*

5. —— *Act VII. of* 1870, § 12—*Appeal from Order fixing Amount of Court Fees on Plaint.*] There is no appeal against the order of the District Judge fixing the amount of the Court fee payable on the plaint.

The right of appeal to which a plaintiff might have been entitled under §§ 31 to 36 of Act VIII. of 1859 has been taken away by § 12, Cl. i. of Act VII. of 1870. NARRAYAN NAIK *v.* THE COLLECTOR OF THANA. *Westropp*, C.J., and *West*, J.....**I. L. Rep. 2 Bom. 145, 1877.**

6. —— *Act VII. of* 1870, § 12—*Appeal from Order fixing Amount of Court Fees on Plaint.*] *Held*, following *Narrayan* v. *Collector of Thana* (I. L. Rep. 2 Bom. 145), that unless the question of the amount of the Court fees properly chargeable on a plaint be wrongly decided by the Court of first instance, to the detriment of the revenue, the decision of the Court is final, and therefore, where that Court has wrongly decided to the detriment of the subject only, there is no appeal. MANOHAR GANESH *v.* BAWA RAMCHARANDAS. *Westropp*, C.J., and *Melvill*, J...**I. L. Rep. 2 Bom. 219, 1877.**

S. C. under **2** and **10.**

7. —— *Act VII. of* 1870, § 17—*Multifarious Suit—"Distinct Subjects"—Plaint—Memorandum of Appeal.*] *Held* (*Spankie*, J., dissenting) that the words "distinct subjects" in § 17 of Act VII. of 1870 mean distinct causes of action or distinct kinds of relief; it is not enough that the distinct subjects should be merely separate and distinct matters embraced in the claim.

Per Spankie, J.—The words mean every separate matter distinctly forming a subject of the claim. CHAMAILI RANI *v.* RAM DAI...**I. L. Rep. 1 All. 552, 1878, F. B.**

8. —— *Act VII. of* 1870, *Sched. I., Cl.* 11—Ad valorem *Duty—Probate Duty.*] A testator who died in 1862, appointed *J.* the executor of his will, and directed that each of his sons who attained 21 years should be joined with him as executors. In 1862, *J.* obtained probate of the will and paid the only fee then leviable by law, *viz.* a commission fee of Rs. 10. In 1878, *J.* died, and two of the testator's sons applied for probate:—

Held, that an *ad valorem* duty was chargeable under Act VII. of 1870, Sched. I., Cl. 11, upon the grant of the probate, on the value of the unadministered estate of the testator.

Digitized by Google

COURT FEES—*contd.*

In the goods of Chalmers (6 Beng. L. R. Appx. 137) followed.

In the Goods of GASPER. *Garth*, C. J. **I. L. Rep. 3 Cal. 733 ; 2 Cal. Rep. 436. 1878.**

9. —— *Act VII. of* 1807, *Sched. I., Cl.* 11—*Probate*—Ad valorem *Fees—Annuity charged on Testator's Property.*] Where it appeared that property disposed of by a will was bequeathed to the testatrix subject to the payment thereout of an annuity for life to a person who survived her :—

Held, that the *ad valorem* fee prescribed by Sched. I., Cl. 11 of Act VII. of 1870 was leviable upon the present value of the property, less the capitalized value of the annuity. *In the Goods of* RUSHTON. *Garth*, C.J...**I. L. Rep. 3 Cal. 736, 1878.**

10. —— *Act VII. of* 1870, *Sched. II., Art.* 17, *Cl. iii. Declaratory Decree Suit for—Consequential Relief.*] A suit praying merely for a declaration that the plaintiff is entitled to require the defendants' to account to him and to permit him to inspect their books, is simply a suit for a declaratory decree, without seeking consequential relief, and so within Art. 17, Cl. iii., of Schedule II. of Act VII. of 1870.

A suit praying for such a declaration as above, and also for a positive order in the nature of a mandatory injunction for the production of the defendants' books and property in their hands, or a suit for such a declaration as above, and a positive decree for an account to be taken by the Court, and for the production of the books and property, would range under § 7, Cl. 4, Art. (*c*), as being a suit to obtain a declaratory decree or order where consequential relief is prayed, and also under Art. (*d*) of the same clause, being a suit to obtain an injunction ; and a suit of the third species above described would fall under Art. (*f*) of the same clause, as being a suit "for accounts." MANOHAR GANESH *v.* BAWA RAMCHARANDAS. *Westropp*, C.J., and *Melvill*, J.....**I. L. Rep. 2 Bom. 219, 1877.**

S. C. under **2** and **6.**

11. —— *Act VII. of* 1870, *Sched. II., Art.* 17, *Cl. iii.—Act VIII. of* 1859, § 246—*Suit for Declaratory Decree.*] A suit by a person against whom an order has been made under § 246 of Act VIII. of 1859 disallowing his claim to the attached property for a decree declaring his right to the property, need not be valued according to the value of the property, but can be brought on a stamp of Rs. 10, under the Court Fees' Act VII. of 1870, Sched. II., Art. 17, Cl. iii. CHUNIA *v.* RAMDIAL. *Pearson* and *Turner*, JJ.....**I. L. Rep. 1 All. 360, 1877.**

S. C. under **4**, *supra.*

COURT FEES' ACT VII. OF 1870—Cannot be used to ascertain Value for purpose of Jurisdiction.

See **Jurisdiction. 15. 19. 20.**

KALIAN DAS *v.* NAWAL SINGH... **I. L. Rep. 1 All. 620.**

BAI MAKHOR *v.* BULAKHI...**I. L. Rep. 1 Bom. 538.**

KALU *v.* VISHRAM...**I. L. Rep. 1 Bom. 543.**

—— § 7, Cl. iii.—Declaratory Decree—Consequential Relief.

See **Court Fees. 1.**

GULZARI MAL *v.* JADAUN RAI...**I. L. Rep. 2 All. 63.**

—— § 7, Cl. iv.—Revision by Judge of Valuation of Plaint.

See **Court Fees. 2.**

MANOHAR *v.* BAWA...**I. L. Rep. 2 Bom. 219.**

—— § 7, Cl. viii.

See **Court Fees. 3.**

COLLECTOR OF THANA *v.* DADABHAI.....**I. L. Rep. 1 Bom. 352.**

—— § 12—Amendment of Plaint originally for Declaratory Decree, by paying Fees, for Ejectment Suit, refused.

See **Declaratory Decree. 3.**

CHOKALINGAPRESHANA NAICKER *v.* ACHIYAR...**I. L. Rep. 1 Mad. 40.**

—— Appeal from Order Fixing Amount of Court Fees on Plaint.

See **Court Fees. 4. 5. 6.**

—— § 16.

See **Pauper Respondent.**

BABAJI *v.* RAJARAM...**I. L. Rep. 1 Bom. 75.**

—— Schedule I., Cl. 11.

See **Probate Duty. 1.**

RAMCHANDRA LAKSHMANJI...**I. L. Rep. 1 Bom. 118.**

Digitized by Google

COURT FEES ACT VII. OF 1870—*contd.*

—— Schedule I., Cl. 11 & 12—Exemption from Probate Duty—Duty paid in England.

See **Probate Duty. 2.**

GLADSTONE...**I. L. Rep. 1. Cal. 168.**

——Schedule I., Cl. 11—Liability of Property on which Duty has been paid in England to pay Duty in India.

See **Administration. 4.**

MURCH...**I. L. Rep. 4 Cal. 725.**

——Schedule I., Cl. 11—Probate Duty—Ad-valorem Duty.

See **Court Fees. 8. 9.**

——Schedule II., Art. 17—Declaratory Decree—Consequential Relief.

See **Court Fees. 1. 10. 11.**

COURT OF WARDS—Not bound to take Charge of Lunatic's Estate—Appointment of Manager by Civil Court valid.

See **Act XXXV. of 1858, § 9.**

MANOHAR LAL *v.* GAURI SHANKAR...**I. L. Rep. 1 All. 476.**

COVENANT NOT TO ALIENATE.

See **Mortgage. 18. 19. 20. 23.**

MUL CHAND *v.* BALGOBIND...**I. L. Rep. 1 All. 610.**

CHUNNI *v.* THAKUR DAS...**I. L. Rep. 1 All. 126.**

GANGA PRASAD *v.* KUSYARI DIN... **Ibid. 611.**

GUNNOO SINGH *v.* LATAFUT HOSSAIN...**I. L. Rep. 3 Cal. 336.**

See **Sale in Execution of Decree. 4.**

KHUBCHAND *v.* KALIAN DAS...**I. L. Rep. 1 All. 240.**

COVENANT FOR QUIET ENJOYMENT—Implied.

See **Darpatni.**

TARACHAND *v.* RAM GOBIND... **L. Rep. 4 Cal. 778.**

COVENANT RUNNING WITH THE LAND.

See **Registration. 28.**

RAJU *v.* KRISHNARAV...**I. L. Rep. 2 Bom. 273.**

1.——*Agreement relating to Land—Transfer of the Land.*] *S.*, being indebted to his wife for her dower, by a duly registered instrument covenanted for himself, his heirs, and successors, to pay his wife, *A.*, Rs. 12 per mensem out of the income in lieu of dower, and he also covenanted not to alienate the land without stipulating for the payment of this allowance from the income thereof. He subsequently gave a usufructuary mortgage of the land to *L.*, stipulating in the deed of mortgage that the mortgagee should pay *A.* Rs. 12 per mensem out of the income of the mortgaged property. *L.* gave *R.* a sub-mortgage of the land, agreeing orally with *R.* to continue to pay *A.* the allowance himself.

In a suit by *A.* against *L.* and *R.* for arrears of the allowance:—

Held, that *A.* was not affected by any arrangement between *L.* and *R.* She looked to payment of her allowance from the income of the land charged with the burden of paying it, and therefore had a claim upon the party who was in possession of the lands. The sub-mortgagee, *R.*, in accepting the mortgage from *L.*, must have been aware of the conditions under which the latter had accepted the original mortgage, and must also have been aware of the lien created by *S.* in favour of his wife, which lien, with or without notice, extended to all persons claiming to hold the lands, to the extent of the amount of the profits set apart for the benefit of the plaintiff. ABADI BEGUM *v.* ASA RAM. *Pearson* and *Spankie*, JJ.....**I. L. Rep. 2 All. 162, 1879.**

COVENANT FOR TITLE.

See **Registration. 28.**

RAJU *v.* KRISHNARAV...**I. L. Rep. 2 Bom. 273.**

CO-WIDOWS—Joint Estate of—Separate Enjoyment of Shares—Survivorship.

See **Hindu Law—Inheritance—Widows. 2.**

SRI GAJAPATHI NILAMANI *v.* SRI GAJAPATHI RADHAMANI ... **L. Rep. 4 I. A. 212; I. L. Rep. 1 Mad. 290.**

CREDIT IN ACCOUNT.

See **Letters Patent—Bombay—(1865), Cl. 12. 1.**

MULCHAND *v.* SUGANCHAND...**I. L. Rep. 1 Bom. 23.**

Digitized by Google

CREDITOR—Right of—to apply for Revocation of Probate.

See **Probate. 3.**

KOMOLLOCHURN *v.* NILRUTTUN... **I. L. Rep. 4 Cal. 360.**

CREDITORS OF ALLEGED HEIR OF TESTATOR—RIGHT OF TO OPPOSE GRANT OF PROBATE.

See **Probate. 6.**

DESPUTTY SINGH...**I. L. Rep. 2 Cal. 208.**

CREDITORS OF DECEASED UNDIVIDED HINDU—Right of—to follow Estate into the hands of Deceased's Heirs for his Separate Debts.

See **Hindu Law—Undivided Family. 9.**

NARSINBHAT *v.* CHENAPA...**I. L. Rep. 2 Bom. 479.**

CREDITORS OF DECEASED HINDU—Right of—to follow his Estate into hands of Purchaser from Heir or Devisee.

See **Limitation. 38a.**

GREENDER CHUNDER *v.* MACKINTOSH...**I. L. Rep. 4 Cal. 897.**

CREDITORS OF DECEASED MAHOMEDAN—Right of—to follow Estate into hands of Purchaser from Heir.

See **Mahomedan Law—Right of Creditors to follow Estate of Debtor into the hands of Purchaser from Heir.**

BAZAYET HOSSEIN *v.* DOOLI CHUND. **I. L. Rep. 4 Cal. 402; L. Rep. 5 I. A. 211.**

CRIMINAL BREACH OF TRUST—Not Compoundable.

See **Compounding Offences. 1. 7.**

REG. *v.* LAKSHMAN...**I. L. Rep. 1 Bom. 158, n.**

REG. *v.* MUTHAVAN...**I. L. Rep. 1 Mad. 191.**

—— *Mad. Reg. VII. of* 1817—*Act XX. of* 1863.] A complaint against the trustee and manager of a Hindu temple, of criminal breach of trust in respect of property belonging to the temple, is cognizable by the Criminal Court, the ordinary criminal law not being excluded by Madras Reg. VII. of 1817 or Act XX. of 1863. ANON. **I. L. Rep. 1 Mad. 55, 1876.**

CRIMINAL PROCEEDINGS—Irregularities in—Waiver by Prisoner.

See **Disqualifying Interest of Judge.**

REG. *v.* BHOLANATH SEN...**I. L. Rep. 2 Cal. 23.**

CRIMINAL PROCEDURE CODE, ACT XXV. OF 1861, § 319—Limitation to Suit to recover Property attached under.

See **Limitation. 53.**

AKILANDAMMAL *v.* PERIASAMMI... **I. L. Rep. 1 Mad. 309.**

CRIMINAL PROCEDURE CODE, ACT X. OF 1872, § 4—Sessions Case.

See **Sessions Case.**

EMPRESS *v.* KANCHAN SINGH...**I. L. Rep. 1 All. 413.**

—— § 36—*Appeal by Person convicted by Deputy Commissioner—High Court.*] *Quære*:—Whether, where a person has been convicted by a Deputy Commissioner invested with powers under § 36 of Act X. of 1872 and sentenced to a term of imprisonment requiring under that section to be confirmed by the Sessions Judge to whom such Deputy Commissioner is subordinate, and such sentence has been confirmed accordingly, an appeal lies to the High Court against such conviction and sentence. EMPRESS *v.* NADUA. *Stuart*, C.J..... **I. L. Rep. 2 All. 53, 1878.**

—— § 46—*Conviction—Power to commit.*] A magistrate to whom a case is referred for enhancement of punishment under § 46 of Act X. of 1872, may order the committal of the convicted person for trial by the Sessions Court. *In the matter of* CHINNIMARIGADA. *Morgan*, C.J., *Holloway* and *Innes*, JJ...**I. L. Rep. 1 Mad. 289, 1876.**

—— § 50—Bench of Magistrates—Jurisdiction.

See post, § 530. 4.

SUFFERUDDIN *v.* IBRAHIM...**I. L. Rep. 3 Cal. 754.**

—— § 56—*Powers of Magistrates—Summary Jurisdiction—Transfer—Furlough.*] The petitioner had been convicted by Mr. Carnegy, the Assistant Commissioner of Kamroop, in the exercise of a summary jurisdiction under § 222 of Act X. of 1872. This officer was, in 1872, in charge of the Jorehaut Division in the district of Seebsaugor, "with first-class powers and powers under § 222" of the Act. In 1874 he went on furlough to England, and, on his return in 1875, was posted to the district of Kamroop, and

Digitized by Google

CRIMINAL PROCEDURE CODE, ACT X. OF 1872—*contd.*

invested with the powers of a Magistrate of the First Class.

Held, that § 56 of Act X. of 1872 did not apply, and that Mr. Carnegy had no summary jurisdiction in Kamroop.

Per Markby, J.—On the ground that by the terms in which the Government had conferred that jurisdiction on Mr. Carnegy, it had in effect "directed," within the meaning of § 56 of Act X. of 1872, that he should not exercise that jurisdiction anywhere but in Seebsaugor.

Per Mitter, J.—On the ground that the office to which Mr. Carnegy was appointed in Kamroop was not equal to or higher than that which he had held in Seebsaugor.

Quære per Markby, J.—Whether the posting of Mr. Carnegy to Kamroop after his return from furlough, was a transfer from Seebsaugor within the meaning of § 56 of Act X. of 1872.

In the matter of PURSOORAM BOROAH. *Markby* and *Mitter*, JJ...**I. L. Rep. 2 Cal. 117, 1876.**

—— § 64—Transfer by Judicial Commissioner from Session to his own Court—Appeal from Sentence to Special Court at Rangoon—Act XVII. of 1875, § 35.

See **Jurisdiction. 17.**

EMPRESS *v.* TSIT OOE.....**I. L. Rep. 4 Cal. 667.**

—— § 64—*Transfer of Case—Power of Judge acting in the English Department.*] An application by a Magistrate or Session Judge for the transfer of a case under § 64 of the Criminal Procedure Code (Act X. of 1872) should be made, not by letter to the English Department of the High Court, but to the Court, sitting in its judicial capacity by motion supported by affidavits, or affirmation in the usual way. REG. *v.* ZUHIRUDDIN...**I. L. Rep. 1 Cal. 219, 1876, F. B.**

1.—— § 67.—*Jurisdiction—Dacoity in the Gaikawadi Territory.*] Where a dacoity was committed at Velanpur, a village in the territory of H. H. the Gaikawad of Baroda, and a part of the stolen property was found where it had been concealed by the accused, in British territory:—

Held, that a conviction of dacoity could not be sustained, as that was a substantive offence completed as soon as perpetrated at Velanpur, although had Velanpur been in British territory

CRIMINAL PROCEDURE CODE, ACT X. OF 1872—*contd.*

the subsequent acts, in the process of taking away the property, might in the legal sense (as they would have the same legal character) have coalesced with the first and principal one, so as to give jurisdiction, under § 67 of the Criminal Procedure Code, in each district into which the property wss conveyed. But it *was held*, that the conviction could be altered to one of retaining stolen property knowing it to be stolen, and the sentences upheld. The retaining is included in the more comprehensive charge viewed as an abstract accusation of an act attended with a certain intent or consciousness, and the conception of dacoity being independent of the place where it was committed, suffices to cover what is embraced within it, though the latter was an act done in British territory. REG. *v.* LAKHYA GOVIND. *Westropp*, C.J., and *N. Harridass*, J...**I. L. Rep. 1 Bom. 50, 1875.**

Dissented from in EMPRESS *v.* S. MOORGA CHETTY.....**I. L. Rep. 5 Bom. 338.**

See **Vol. 2, Col. 720.**

2.—— § 67.—*Theft committed in Foreign Territory—Jurisdiction.*] The accused stole property in foreign territory and was arrested with it in his possession in a district in British territory:—

Held, that § 67 of Act X. of 1872 did not give the British Courts of such district jurisdiction to try him for the theft. REG. *v.* ADIVIGADU. *Holloway*, *Innes*, and *Kindersley*, JJ...**I. L. Rep. 1 Mad. 171, 1876.**

—— § 90—Village Accountant—Village Munsiff's Peon not under.

See **Penal Code, § 217.**

In the matter of RAMUKI NAYAR...**I. L. Rep. 1 Mad. 266.**

1.—— § 90.—*Information to Police—Agent of Owner of Land.*] *Per Markby*, J.—A *khasanchi* is not an "agent" within the meaning of § 90 of the Criminal Procedure Code, Act X. of 1872. A *dewan* might be an agent within the meaning of the Act if his master was absent; but the section must be strictly constructed, and does not apply to a *dewan* who was acting only under the orders of a resident master.

Per Prinsep, J.—As regards § 90, there is considerable force in the argument that although the commencement of the section refers to an agent of an owner or occupier of land responsi-

Digitized by Google

CRIMINAL PROCEDURE CODE, ACT X. OF 1872—*contd.*

ble for giving information to a Magistrate, when it comes to declare the nature of that information, the terms of the first three clauses seem to exclude that class, referring only to the other classes. It would seem either that this was an accidental omission of the Legislature, or that the Legislature expressly intended that an agent is responsible only for giving information regarding the last clause, *viz.*, of the occurrence of any sudden or unnatural death. EMPRESS *v.* ACHIRAJ LALL.....**I. L. Rep. 4 Cal. 603; 3 Cal. Rep. 87, 1878.**

2.—— § 90.—*Omission to give Information to the Police of Offence.*] The provisions of § 90 of the Criminal Procedure Code (Act X. of 1872) and § 176 of the Penal Code ought not to be used for purposes of vexation, but in order to secure due information to Magistrates and the Police, of offences committed within their jurisdiction. Provided that information is conveyed to the nearest Magistrate or Police officer by one of the parties bound to give such information, it is not reasonable that every other person who may possibly be bound to give information should be prosecuted for not having done so. Where, therefore, information of a theft had been given to the police by a *gomastah*, and a *punch* of the village, a conviction of another *gomastah* (who had not obtained information thereof himself till after it had been reported to the police), under § 176 of the Penal Code, was set aside. EMPRESS *v.* SASHI BHUSAN CHUCKRABUTTEY. *Ainslie* and *Broughton*, JJ...**I. L. Rep. 4 Cal. 623, 1878.**

—— § 122—Confession defectively recorded—Secondary Evidence of.

See **Evidence. 12. 14.**

REG. *v.* SHIVYA...**I. L. Rep. 1 Bom. 219.**

EMPRESS *v.* MANNOO TAMOOLEE... **I. L. Rep. 4 Cal. 696.**

1.—— § 122—*Power of a Magistrate to record a Statement of a Person not accused of an Offence.*] Section 122 of the Code of Criminal Procedure (Act X. of 1872) authorizes a Magistrate to record the statement of a person who appears before him as a witness, as well as the confession of an accused person. In the former case the statement must be recorded in the manner prescribed for recording evidence, *i.e.*, on oath or affirmation, and in the latter case in the manner prescribed by §§ 345 and 346 of the Code, without oath or affirmation. IMPX. *v.* MALKA. *Kemball* and *Pinhey*, JJ...**I. L. Rep. 2 Bom. 643, 1878.**

2. —— § 122.—*Confession — Magistrate—Evidence—Act I. of* 1862, § 1.] Where a Magistrate in taking the confession of a prisoner under § 122 of the Criminal Procedure Code (Act X. of 1872) omits to take it in writing with the formalities prescribed by § 346 of that Code, such confession is not absolutely inadmissible in evidence. Evidence may be taken to show that such a confession had been duly recorded, though the Magistrate's procedure had been irregular.

Reg. v. *Shivya and others* (I. L. Rep. 1 Bom. 219) dissented from. A village Munsiff in the Madras Presidency is a "Magistrate" within the meaning of § 26 of the Evidence Act I. of 1872.

The word "include" in Cl. 13 and other clauses of § 1 of Act I. of 1868 is intended to be enumerative and not exhaustive. EMPRESS *v.* RAMANJIYA. *Innes* and *Forbes*, JJ... **I. L. Rep. 2 Mad. 5, 1878.**

—— §§ 133 and 135—Inquiry by Magistrate into Cause of Death—not a Judicial Proceeding.

See **Report of Magistrate.**

TROYLOKANATH *v.* RAM CHURN ... **I. L. Rep. 3 Cal. 742.**

—— § 142—Discharge—Revivial of Prosecution.

See **Revival of Prosecution. 5.**

IMPX. *v.* GOWDAPA.....**I. L. Rep. 2 Bom. 534.**

1. —— § 142.—*Sanction to prosecute—Power of the District Magistrate to proceed where Prosecutor has not availed himself of Sanction—Amendment of Charge.*] Where sanction has been given under § 468 of Act X. of 1872 by a Deputy Magistrate to a person to prosecute another under § 211 of the Penal Code, for bringing a false charge, and such sanction is not proceeded under, it is open to the District Magistrate to take up the case under § 142 without complaint.

Digitized by Google

CRIMINAL PROCEDURE CODE, ACT X. OF 1872—*contd.*

Such sanction would authorize the District Magistrate to frame a charge under § 192 of the Penal Code. EMPRESS *v.* NIPCHA. *Jackson* and *Tottenham*, JJ.....**I. L. Rep. 4 Cal. 712, 1878.**

1.—— § 157.—*Extradition—Warrant.*] It is not essential to the validity of a warrant issued under § 157 of the Criminal Procedure Code (Act X. of 1872) that the Magistrate issuing it should be, at the time he issues it, within the local limits of his jurisdiction. He may issue such warrant from foreign territory. REG. *v.* LOCHA KALA.....**I. L. Rep. 1 Bom. 340.**

—— § 188.

See **Compounding Offences. 5. 6.**

REG. *v.* DEVAMA...**I. L. Rep. 1 Bom. 64.**

REG. *v.* RAHIMAT...**I. L. Rep. 1 Bom. 147.**

—— 195—Discharge—Fresh Evidence.

See **Revival of Prosecution. 2.**

EMPRESS *v.* HURRY DAYAL...**I. L. Rep. 4 Cal. 16.**

—— § 209.

See **Compensation.**

In re KESHAV.....**I. L. Rep. 1 Bom. 175.**

—— § 210.

See **Compounding Offences. 6.**

REG *v.* RAHIMAT.....**I. L. Rep. 1 Bom. 147.**

—— § 210—*Complainant — Withdrawal.*] In cases of contempt of the lawful authority of a public servant, the complainant spoken of in § 210 of the Criminal Procedure Code (Act X. of 1872) is the public servant whose authority has been resisted, and without whose sanction no proceeding could be instituted, and not the person injured through the resistance. Therefore to make the withdrawal of the complaint of such offence legal, it must be based on the application alone of the Court or authority sanctioning the proceedings. *In re* MUSE ALI ADAM.....**I. L. Rep. 2 Bom. 653.**

—— § 215.

See **Compounding Offences. 5.**

REG. *v.* DEVAMA...**I. L. Rep. 1 Bom. 64.**

CRIMINAL PROCEDURE CODE, ACT X. OF 1872—*contd.*

—— § 215—Discharge of Accused—Revival of Prosecution.

See **Revival of Prosecution. 5.**

IMPX. *v.* GOWDAPA...**I. L. Rep. 2 Bom. 534.**

—— § 215—Discharge by Subordinate Magistrate—Case triable by Magistrate only—Course for District Magistrate to pursue.

See **Criminal Procedure Code, Act X. of 1872, § 295.**

DIJAKUR DUTT.....**I. L. Rep. 4 Cal. 647.**

1. —— § 215.—*Evidence for Prosecution.*] A Magistrate is bound, before he discharges an accused person under § 215 of the Criminal Procedure Code, Act X. of 1872, to examine all the witnesses for the prosecution, and should not refuse to examine witnesses simply because their evidence will be to the same effect as that already taken for the prosecution. EMPRESS *v.* HEMATULLA. *Jackson* and *Cunningham*, JJ... **I. L. Rep. 3 Cal. 389, 1878.**

2.—— § 215.—*Examination of Witnesses for Prosecution—Discharge of Accused.*] Before a Magistrate discharges an accused person under § 215 of the Criminal Procedure Code, Act X. of 1872, he is bound, under that section, to examine all the witnesses named for the prosecution. *Empress* v. *Himatulla* (I. L. Rep. 3 Cal. 389.) followed. EMPRESS *v.* KASHI. *Straight*, J...**I. L. Rep. 2 All. 447, 1879.**

—— § 218—Right of Accused to recall and cross-examine Witnesses for Prosecution.

See **Practice—Criminal. 1.**

EMPRESS *v.* BALDEO SAHAI...**I. L. Rep. 2 All. 253.**

—— § 220.

See **Conviction on several Charges. 1.**

REG. *v.* TUKAYA.....**I. L. Rep. 1 Bom. 214.**

—— §§ 220, 221—*Practice—Committal for Trial after Charge has been drawn up.*] Section 221 of the Criminal Procedure Code (Act X. of 1872) authorizes a Magistrate, although a charge may have been drawn up, to stop further proceedings and commit for trial: for this purpose § 221 may be regarded as a proviso to § 220.

Digitized by Google

CRIMINAL PROCEDURE CODE, ACT X. OF 1872—*contd.*

Though the explanation to § 220 provides that if a charge has been drawn up, the prisoner must be either convicted or acquitted, it does not require that the conviction or acquittal should be by the Magistrate who drew it. EMPRESS *v.* KUDRUTOOLAH. *Jackson* and *Cunningham*, JJ...**I. L. Rep. 3 Cal. 495; 2 Cal. Rep. 2, 1878.**

—— § 222—*Act XXI. of* 1856, § 49—*Offence punishable with Fine and Confiscation—Summary Trial.*] An offence under § 49 of Act XXI. of 1856, can be tried summarily by a Magistrate under § 222 of the Criminal Procedure Code, Act X. of 1872.

The confiscation, which is provided for by § 49, is merely a consequence of the conviction, and does not form part of the punishment for the offence.

Khetter Mohun Chowrunghee (22 W. Rep., Cr. Rul. 43) and *Judoonath Shaha* (23 W. Rep. Cr. Rul. 33) overruled. EMPRESS *v.* BAIDANATH DAS.....**I. L. Rep. 3 Cal. 366; 1 Cal. Rep. 442, 1878, F. B.**

See **3 Bom. H. C. Rep., Cr. Ca. 12. 14.**

—— § 228—Record in Appealable Case—Substance of Evidence.

See **Summary Trial.**

EMPRESS *v.* KARAN SINGH...**I. L. Rep. 1 All. 680.**

—— § 231—Power of Sessions Court to commit to itself Case not triable exclusively by Court of Sessions.

See **Jurisdiction. 16.**

EMPRESS *v.* FUTTEH TYABKHAN... **I. L. Rep. 4 Cal. 750.**

—— § 263—Appeal against an Acquittal by a Jury.

See **Appeal—Criminal. 2.**

IMPX. *v.* HARI.....**I. L. Rep. 2 Bom. 526.**

1.—— § 263.—*Trial by Jury—Acquittal—Verdict reversed.*] On a reference by a Session Judge under § 263 of the Criminal Procedure Code (Act X. of 1872), the whole case is opened up, and the functions of both Judge and Jury are cast upon the High Court, and this differentiates the position of the High Court very widely from that of the superior Courts in England, in dealing with cases which come before them in the exercise of their function of reviewing matters disposed of by subordinate Courts.

But, notwithstanding this difference, and the more onerous duties devolving in consequence on it, the High Court will be guided, as far as may be, by the analogies of English law. It is a well-recognized principle that the Courts in England will not set aside the verdict of a jury, unless it is perverse, and patently wrong, or may have been induced by an error of the Judge. To this principle the High Court will adhere generally, but in a proper case will rectify the verdict of a jury. REG. *v.* KHANDERAU BAJIRAV. *West* and *N. Harridass*, JJ...**I. L. Rep. 1 Bom 10, 1875.**

2.—— § 263.—*Dissent of Court from Verdict of Jury.*] The "dissent" referred to in Cl. 4 of § 263 of the Criminal Procedure Code (Act X. of 1872) must be such a complete dissent as to lead the Judge to consider it necessary for the ends of justice to submit the case to the High Court. IMPX. *v.* BHAWANI BANDUJI. *Westropp*, C.J., and *Melvill*, J.....**I. L. Rep. 2 Bom. 525, 1878.**

3.—— § 263.—*Power of High Court—Acquittal by Jury.*] Where the jury acquitted the prisoners on the charges framed, but found certain facts which amounted to another offence, and omitted to convict the prisoners of that offence, as they had the power to do under § 457 of the Criminal Procedure Code:—

Held, that the High Court could, on the case coming before it under § 263 of that Code, find the prisoners guilty of that offence. EMPRESS *v.* HARAI MIRDHA. *Markby* and *Mitter*, JJ...**I. L. Rep. 3 Cal. 189, 1877.**

4.—— § 263.— *Verdict — Disagreement among Jurors—Dissent of Judge from Verdict—Power of High Court.*] Where a jury are not unanimous, and the Sessions Judge dissents from the verdict of acquittal, it is his duty, on referring the case to the High Court under § 263 of the Criminal Procedure Code, Act X. of 1872, to state his opinion as to the exact offence of which he considers the prisoner is guilty. Where a jury are not unanimous in their finding, and the Sessions Judge dissents from the verdict of the majority, the High Court, on the case being referred under § 263 of Act X. of 1872, is competent to find the prisoner guilty, notwithstanding that the verdict of the majority was a verdict of

Digitized by Google

CRIMINAL PROCEDURE CODE, ACT X. OF 1872—*contd.*

acquittal. EMPRESS *v.* SAHAR RAE. *Markby* and *Prinsep*, JJ...**I. L. Rep. 3 Cal. 623; 2 Cal. Rep. 304, 1878.**

S. C. under **Grievous Hurt.**

—— § 272—Appeal, Arrest Pending.

See **Appeal—Criminal. 6. 7.**

——Appeal, Limitation.

See **Appeal—Criminal. 5.**

——Appeal, Officer appointed to prefer.

See **Appeal—Criminal. 4.**

—— § 280.

See **Enhancement of Sentence.**

ANON.....**I. L. Rep. 1 Mad. 54.**

—— § 288—*Reference—Power of High Court to alter Finding.*] The High Court as a Court of reference has no power under § 288 to alter a conviction of murder into one of culpable homicide not amounting to murder, but only to order a new trial, unless there has been a petition of appeal, in which case, the Court being a Court of appeal as well as of reference, could alter the finding of the Sessions Court. Where the prisoners were tried on two charges of murder and culpable homicide not amounting to murder, and the opinion of the assessors had been taken on both charges, but the Sessions Judge recorded a conviction and sentence for murder only, the High Court being of opinion, on a reference under § 287, that the offence proved amounted only to culpable homicide not amounting to murder, did not order a trial *de novo*, but directed the Sessions Judge to record a conviction and sentence on the charge of culpable homicide not amounting to murder. REG. *v.* BALAPA DUNDAPA. *Melvill* and *Kemball*, JJ.....**I. L. Rep. 1 Bom. 639, 1877.**

—— §§ 294 and 297—*Revision—Power of High Court—"Material Error."*] In a case of apprehended breach of the peace, the Magistrate bound over the parties in sums amounting in the aggregate to Rs. 60,000 or upwards. The High Court quashed the order, holding it to be altogether unreasonable.

Per Markby, J.—Notwithstanding the very general words of §§ 294 and 297 of Act X. of 1872, the Court ought not, in the exercise of the powers conferred by Chapter XXII. of that Act, to go into evidence and examine the conclusions of the Court below upon the facts. Still the High Court is not precluded from interfering where, in cases requiring the exercise of discretion, it appears on the face of the proceedings that the Magistrate has exercised no discretion at all, or has exercised his discretion in a manner wholly unreasonable.

CRIMINAL PROCEDURE CODE, ACT X. OF 1872—*contd.*

Per Mitter, J.—The words "material error" in § 297 of Act X. of 1872 mean any error appearing on the face of a judicial proceeding resulting in an unjust order. *In the matter of* JUGGUT CHUNDER CHUKKERBUTTY...**I. L. Rep. 2 Cal. 110, 1876.**

—— § 295—Discharge by Subordinate Magistrate—Course to be pursued by District Magistrate.

See **Revival of Prosecution. 5.**

IMPX. *v.* GOWDAPA...**I. L. Rep. 2 Bom. 534.**

—— § 295—Discharge—Sessions Case.

See **Revival of Prosecution. 2.**

EMPRESS *v.* HARRY DOYAL...**I. L. Rep. 4. Cal. 16.**

—— §§ 295-296—Improper Discharge of Accused Persons—Course to be pursued by District Magistrate.

See **Revival of Prosecution. 1 2. 3.**

MOHESH MISTREE...**I. L. Rep. 1 Cal. 282.**

EMPRESS *v.* DONNELLY.....**I. L. Rep. 2 Cal. 405.**

EMPRESS *v.* HARRY DOYAL KARMOKAR...**I. L. Rep. 4 Cal. 16.**

—— § 295—*Discharge by Subordinate Magistrate—Course to be pursued by District Magistrate.*] The District Magistrate has no power to remand a case (triable by a Magistrate only) to a Subordinate Magistrate for retrial after the latter has discharged the accused under § 215 of the Criminal Procedure Code; the courses open to him are—(1) to take a fresh complaint on the ground of there being further evidence procurable which was not before the Court when the order of discharge was given (and on this ground only); or, (2) if there be no such additional evidence procurable, to report the case for the orders of the High Court under § 296 of Act X. of 1872. *In the matter of the Petition of* DIJAHUR DUTT. *Anslie* and *Broughton*, JJ.....**I. L. Rep. 4 Cal. 647, 1879.**

Digitized by Google

CRIMINAL PROCEDURE CODE, ACT X. OF 1872—*contd.*

—— § 296—Discharge by Subordinate Magistrate of Case triable by Magistrate—Course to be pursued by District Magistrate.

See **Revival of Prosecution. 1. 2. 3. 4. 5.**

—— § 296—Power of High Court to call for Report of Magistrate embodying Result of Inquiry into Cause of Death under § 135.

See **Report of Magistrate.**

TROYLOKANATH *v.* RAM CHURN... **I. L. Rep. 3 Cal. 742.**

—— § 296—Sessions Case.

See **Sessions Case.**

EMPRESS *v.* KANCHAN SINGH...**I. L. Rep. 1 All. 413.**

—— § 296—*Counsel—Right of, to be heard.*] Counsel cannot claim as of right to be heard on a reference to the High Court under § 296 of the Criminal Procedure Code. REG. *v.* DEVAMA. *West* and *N. Harridas*, JJ...**I. L. Rep. 1 Bom. 54, 1875.**

—— § 297—Acquittal without asking Assessors' Opinion—No Ground for Revision.

See **Assessors.**

NARAIN DAS...**I. L. Rep. 1 All. 610.**

—— § 297—"Judicial Proceeding"—Revision.

See **Judicial Proceeding. 1.**

See **Criminal Procedure Code, Act X. of 1872, §§ 415 to 419. 2.**

—— § 297—Right of Private Prosecutor to apply for Revision of Acquittal.

See in the matter of the Petition of NARAIN DAS.....**I. L. Rep. 1 All. 610.**

And *see infra*, **1. 3. 9.**

1.—— §297.—*Acquittal—Power of Revision of High Court.*] *Held* by *Pearson* and *Oldfield*, JJ., that an acquittal does not preclude revision by the High Court under § 297 of the Criminal Procedure Code (Act X. of 1872). That section authorizes the High Court to order the new trial of a person who has been acquitted by reason of some material error in a judicial proceeding of a subordinate Court.

CRIMINAL PROCEDURE CODE, ACT X. OF 1872—*contd.*

By *Turner*, J.—Where there has been an acquittal on the merits, where an accused person has been acquitted because the Court by which he has been tried holds the evidence insufficient to prove his guilt beyond reasonable doubt, the High Court cannot interfere as a Court of Revision. But where the acquittal has been brought about by such a material error in the proceeding as makes the proceeding bad in law, it is competent for the High Court to interfere. If the facts found by the Subordinate Court constituted the offence charged, and, through error of law, the Subordinate Court held that they did not constitute the offence, and therefore acquitted the accused; or the if the Subordinate Court improperly excluded relevant evidence, and consequently acquitted the accused, in both those cases, the High Court would have power to interfere as a Court of Revision.

It is competent to the High Court to allow a private person to move it to exercise its powers under § 297.

By *Spankie*, J.—The High Court has no power to revise an order of acquittal on the facts found on the evidence. Any revision must proceed on the ground of material error in law in the proceedings, *e.g.*, some error or defect, either in the charge, or in the proceedings on or before the trial, on account of the improper admission or rejection of evidence whereby there has been a failure of justice affecting the due conduct of the prosecution.

By *Stuart*, C.J.—A private prosecutor, who can show on the face of his petition a proper case for revision of a judgment of acquittal is entitled to have it entertained under § 297 of the Criminal Procedure Code, and a petition stating that the facts as found by the Court acquitting the accused, were sufficient to convict, discloses a proper case for revision, and one which entitles the petitioner to have the record of the trial in the Subordinate Court sent for, with a view to the consideration of the question whether a new trial should be ordered,—the High Court having the power to make such an order.

The first part of § 297 is not merely introductory to the particular enactments which follow, but is, on the contrary, a substantive and complete enactment in itself, without any necessary reference to the clauses which follow; and the powers thus given to the High Court

Digitized by Google

CRIMINAL PROCEDURE CODE, ACT X. OF 1872—*contd.*

are large and full, if not unlimited. *In the matter of* HARDEO...**I. L. Rep. 1 All. 139, 1876.**

2. —— § 297.—*Judicial Proceeding—Arrest pending Appeal—Order of Sessions Judge admitting to Bail—Power of High Court.*] An appeal having been preferred by the Government against an acquittal, an order was made by the High Court calling for the record. The officer whose duty it was to issue the precept misapprehending the effect of the order, issued notices to the Magistrate of the District that the appeal had been admitted, and would be heard on day a named. The persons who had been acquitted were arrested and sent to the Magistrate of the District, who ordered their detention until the decision of the appeal. On an application made to the Sessions Court, that Court referred the case, under § 296 of the Criminal Procedure Code, for the orders of the High Court, and in the mean time admitted the accused to bail under 230 of the Code :—

Held per Turner, C.J. (Offg.), and *Pearson*, J. —That the order of the Magistrate directing the detention of the accused, not being a judicial proceeding, the High Court had no power under § 297 of the Criminal Procedure Code, Act X. of 1872, to set it aside.

Per Pearson, J.—The case was not one which could properly be reported by the Sessions Judge under § 296 of the Code; nor could that officer properly admit the accused to bail under § 530. But the order made by him under that section could not be set aside as null for want of jurisdiction, not being a judicial proceeding within the terms of the definition contained in the law.

Held by *Spankie* and *Oldfield*, JJ.—That the Magistrate's proceedings were judicial proceedings, and therefore that the High Court had power to set aside his order, which was illegal under § 297 of the Criminal Procedure Code, that section applying to interlocutory orders, and not being confined to orders in cases finally disposed of. REG. *v.* GHOLAM ISMAIL...**I. L. Rep. 1 All. 1, 1875.**

3. —— § 297.— *Revision—Power of High Court.*] In the course of a serious riot, one *S.* was killed by a shot of a gun. The first prisoner and others were charged with murder. The first prisoner alleged that he had fired the shot, but in self-defence, and his statement was believed by the Judge, who acquitted him.

The widow of the deceased presented a petition to the High Court to exercise its powers of revision :—

Held, 1*stly*, that the High Court may exercise its powers of revision upon information in whatever way received, and consequently on the petition, as in the present case, of a person occupying the position of complainant;

2*ndly*, That it was not intended by the Legislature that the powers given by Cl. 1, § 297, should be exercised only in the particular instances of error and in the particular manner given in the succeeding clauses, which are merely intended to show the particular course which may be taken in those particular instances of error;

3*rdly*, that it is not a ground for revision by the High Court that all the evidence which the prosecution might have brought before the Session Judge, was not brought before him;

4*thly*, that the words "material error" in §297 cannot be held to include error in the appreciation of evidence. *In the matter of* AUROKIAM. *Innes*, C.J. (Offg.), *Muttusami Ayyar*, J. **I. L. Rep. 2 Mad. 38, 1878.**

4. —— § 297.—*Evidence.*] On an application to the High Court under § 297 of Act X. of 1872 by a person who has been convicted by a Magistrate, the High Court will not go into the evidence. EMPRESS *v.* DONNELY. *Markby* and *Prinsep*, JJ.....**I. L. Rep. 2 Cal. 405, 1877.**

S. C. under **Revival of Prosecution. 3.**
And **Evidence. 22.**
See **8**, *infra.*

5.——§ 297.—*Acquittal—Revision.*] Where an officiating Magistrate, being of opinion that an accused, prosecuted under § 29 of Act XVIII. of 1869, had been improperly acquitted, referred the case to the High Court, the High Court (*Ainslie* and *Morris*, JJ.) said, "unless the Government sees fit to appeal against the acquittal under § 272 of the Criminal Procedure Code, this Court cannot interferfere in any way. EMPRESS *v.* DWARKANATH CHOWDHRY...**I. L. Rep. 2 Cal. 399, 401, 1877.**

6. —— § 297.—*Improper Acquittal—Appeal by Government.*] The Magistrate of the district, thinking that certain accused persons had been

Digitized by Google

CRIMINAL PROCEDURE CODE, ACT X. OF 1872—*contd.*

improperly acquitted by a Subordinate Magistrate referred the case to the High Court, being of opinion that though § 297 of the Criminal Procedure Code did not mention orders of acquittal as coming under the revision of the High Court, still the High Court would, for good and sufficient reason, reverse an order of acquittal:—

Held, that as under the Criminal Procedure Code, provision is made for an appeal by Government in cases of improper acquittal, and § 297 while expressly giving power to the High Court to correct errors in cases of improper discharge, conviction and sentence, says nothing of improper acquittal, the intention of the Legislature was, that there should be no interference with an acquittal, except on a formal appeal by Government. EMPRESS *v.* MIYAJI AHMED. *West* and *Pinhey*, JJ...**I. L. Rep. 3 Bom. 150, 1879.**

7. —— § 297.—*Order of Division Bench to Magistrate to hold Inquiry—Conviction—Reference for Confirmation of Sentence of Death—Review.*] A Division Court of the High Court at Allahabad ordered a Magistrate who had refused to inquire into a charge of murder on the ground that he had no jurisdiction, to do so, considering that the Magistrate had jurisdiction. The Magistrate inquired into the case and committed the accused for trial to the Sessions Judge, who convicted, and sentenced the accused to death. The proceedings of the Session Court being referred to the High Court for confirmation of the sentence, the case came before the Full Court:—

Held, per Stuart, C.J., *Spankie* and *Oldfield*, JJ., that in determining whether such sentence should be confirmed, the full Court was not precluded by the order of the Division Court from considering whether the accused person had been convicted by a Court of competent jurisdiction, but that it was incumbent on, and was the absolute duty of, the full Court to satisfy itself that the sentence was one which could legally be passed by the Session Judge. EMPRESS *v.* SARMUKH SINGH...**I. L. Rep. 2 All. 218, 1879.**

S. C. under **Offence committed at Cyprus.**

8. —— § 297.—*Powers of High Court as Court of Revision—Material Error—Great Laxity in Weighing Evidence.*] The appellant had been

CRIMINAL PROCEDURE CODE, ACT X. OF 1872—*contd.*

convicted on the 27th April 1875, with five other persons, of the offence of dacoity, and sentenced to transportation for life. The five other persons appealed and were acquitted and released. The accused did not appeal, and was sent to the Andaman Islands, from whence he forwarded his petition of appeal to the High Court in May 1879, urging that through want of funds and friends he could not appeal before.

The appeal was heard by *Spankie*, J., who had heard and decided the appeals of the other five persons. His Lordship in giving judgment said:—"The period of limitation (for the appeal) has so long expired, and the explanation of the delay in appealing, though there may be some truth in it, is not altogether satisfactory, that I feel compelled to disallow the appeal. It is the case that all convicts have a right of appeal once, but that right is subject to a law of limitation, and I think it would be unwise to apply § 5 of this law so as to encourage the idea among the convicts of a penal settlement that they can at any time, as in this case, five years after the date of their conviction, appeal to this Court. At the same time, being well acquainted with the facts of the case, as I decided the appeal of the five other persons who had been transported for life, I am quite prepared to admit the petition as one for revision of the proceedings." His Lordship then stated that the petitioner's case was on all fours with that of the five other persons, and that the reasons, which influenced his decision respecting them, led him to say that there was no satisfactory evidence to justify the conviction of the petitioner,—and continued—"I can only attribute my not having done so" (*viz.*, considered the case of the petitioner as a Court of Revision—on the occasion of the appeal of the five other convicts) "to the uncertainty which prevailed in this respect as to whether the Court was at liberty to interfere with the conviction of a prisoner who had not appealed, (when dealing with the case of a person tried with him who had appealed) simply on a question of credibility of evidence. Later decisions both of this and of other Courts, for years past, have not tended to remove this uncertainty as to what is or is not a material error in a judicial proceeding. I am myself inclined—indeed, I have acted in other cases in this view—to regard great laxity in weighing and testing evidence as a material error in a judicial proceeding;

Digitized by Google

CRIMINAL PROCEDURE CODE, ACT X. OF 1872—*contd.*

and looking at the trial in this case, it would seem to me that there had been great indifference and laxity on the part of the Sessions Judge in this respect. Accepting, however, the judgment of this Court in Full Bench in the matter of *Hardeo* (I. L. Rep. 1 All. 139), I believe that I have the power of interfering now with the conviction of the petitioner. If we are not precluded by a judgment of acquittal from exercising the powers of revision under § 297 of Act X. of 1872, we cannot be precluded from doing so where there has been a conviction on evidence which has received no sifting, and which in many respects is so transparently false, that if it had been at all tested, its falsehood could not have escaped notice. Being of opinion that I have the power of revision in this case,—in which opinion my honourable colleagues, to whom the papers have been circulated, acquiesce,—I annul the conviction and sentence and direct the release of " the petitioner." EMPRESS *v.* MURLL...**I. L. Rep. 2 All. 336.**

9. ——§ 297.—*Revision—Right of Private Prosecutor.*] A private prosecutor can move the High Court, in the case of an acquittal by a Sessions Judge, to exercise its powers of revision, under § 297 of Act X. of 1872, on the ground of material error in law, or procedure in the proceedings of the Sessions Judge, but not on questions of fact purely. *In the matter of* SUKHO *v.* DURGA PRASAD. *Straight*, J...**I. L. Rep. 2 All. 448, 1879.**

10. —— § 297.—*Court of Appeal.*] Where there is a Court of Appeal to which resort can be had, resort to the High Court as a Court of revision is premature, and it has been the practice of the Court not to interfere in revision when the petitioner has neglected to avail himself of the ordinary channel of relief below. *Per Spankie*, J., in EMPRESS *v.* NILAMBAR BABU...**I. L. Rep. 2 All. 276.**

S. C. under **Judicial Proceeding**, and **Order for Disposition of Property alleged to be stolen.**

1.—— § 309.—*Penal Code*, § 160—*Sentence Imprisonment in Default of Payment of Fine.*] The proper construction of the final clause of § 309 of Act X. of 1872 is, that if imprisonment and fine, and further imprisonment in default of payment of the fine, is the sentence, the imprisonment in default cannot exceed one-fourth of the period of imprisonment which the Magistrate is competent to inflict for the offence; but if the sentence is *fine* only, the imprisonment in default of payment may be the whole period of imprisonment which the Magistrate is competent to inflict for the offence.

Where, therefore, prisoners convicted under § 160 of the Penal Code were sentenced to pay a fine of Rs. 25 each, or in default to be rigorously imprisoned for 30 days, the full term of imprisonment under that section:—*Held*, that the sentence was legal. REG. *v.* MUHAMMAD SAIB. *Kindersley*, J., dissenting.....**I. L. Rep. 1 Mad. 277, 1877, F. B.**

2.—— § 309.—*Imprisonment in Default of Payment of Fine—Act VIII. of* 1873, § 70—*Penal Code*, §§ 64, 65.] The 309th Section of the Criminal Procedure Code, Act X. of 1872, makes §§ 64 and 65 of the Penal Code applicable not only to offences punishable under the Penal Code, but to offences punishable under any law in force for the time being, and therefore to offences punishable under Act VIII. of 1873. The provisions of that section do not extend the period of imprisonment which may be awarded under the provisions of § 65 of the Penal Code, but only regulate the proceedings of Magistrates whose powers are limited.

In the case of an offence, therefore, punishable under § 70 of Act VIII. of 1873 with fine and imprisonment, the maximum period of imprisonment in default of payment of fine allowed by law is one-fourth of one month, and if a Magistrate punishes an offender for such offence with fine only, he can award, in default of payment of the fine, no longer term. EMPRESS *v.* DARBA... **I. L. Rep. 1 All. 461, 1877, F. B.**

——§ 314.

See **Conviction on several Charges. 1.**

REG. *v.* TUKAYA.....**I. L. Rep. 1 Bom. 214.**

—— § 314 — Aggregate Sentence measures Right of Appeal.

See **Appeal—Criminal. 3.**

REG. *v.* RAMA BHIVGOWDA...**I. L. Rep. 1 Bom. 223.**

Digitized by Google

CRIMINAL PROCEDURE CODE, ACT X. OF 1872—*contd.*

—— § 344—Evidence of Accused illegally pardoned.

See **Evidence. 2. 3.**

REG. *v.* HANMANTA...**I. L. Rep. 1 Bom. 610.**

EMPRESS *v.* ASGHAR ALI...**I. L. Rep. 2 All. 260.**

—— § 346—Confession defectively recorded.

See **Evidence. 12. 14.**

REG. *v.* SHIVYA..... **I. L. Rep. 1 Bom. 219.**

EMPRESS *v.* MANNOO TAMOOLEE... **I. L. Rep. 4 Cal. 696.**

—— § 346—Confession under § 122 improperly recorded.

See **Criminal Procedure Code, Act X. of 1872, § 122. 2.**

EMPRESS *v.* RAMANJIYA.....**I. L. Rep. 2 Mad. 5.**

—— § 346—*Confession—Attestation when unnecessary.*] The attestation required by § 346 of the Criminal Procedure Code (Act X. of 1872) is unnecessary when the confession is made in Court to the Magistrate trying the accused at the time of trial. In such case it is not necessary for the Magistrate to record any "confession," since he is competent, on the admission of the accused, to sentence him without any further record (§ 324, Act X. of 1872). *In the matter of* CHUMMAN SHAH. *Markby* and *Prinsep*, JJ.....**I. L. Rep. 3 Cal. 756, 1878.**

—— § 347—Accused improperly pardoned.

See **Evidence. 2. 3.**

REG. *v.* HANMANTA...**I. L. Rep. 1 Bom. 610.**

EMPRESS *v.* ASGHAR ALI..... **I. L. Rep. 2 All. 260.**

—— § 351 — Power of Magistrate to record Evidence after Close of Case for Defence.

See **Practice—Criminal. 1.**

EMPRESS *v.* BALDEV SAHAI...**I. L. Rep. 2 All. 253.**

—— § 359—*Witnesses for Defence—Powers of Magistrate.*] Section 359 of the Criminal Procedure Code, Act X. of 1872, means that if, among the persons named by the accused as witnesses to a defence, the Magistrate considers that any particular witness is included for the purpose of vexation and delay, he is to exercise his judgment and inquire whether such witness is material. But that provision does not enable the Magistrate to inquire generally into what the defence of the accused person is to be, and to consider whether on learning the nature of the defence, he is absolutely to abstain from summoning the whole of the witnesses cited by the accused.—*Per Jackson*, J., in EMPRESS *v.* RAJCOOMAR SINGH...**I. L. Rep. 3 Cal. 573; 1 Cal. Rep. 352, 582, 1878.**

S. C. under **Land held by Joint Owners** and under **Stat. 24 and 25 Vict. Cl. 104, § 15. 8.**

—— § 390—Session Judge admitting to Bail persons arrested by Magistrate after Acquittal, pending Appeal.

See **Criminal Procedure Code, Act X. of 1872, § 297. 2.**

REG. *v.* GHOLAM ISMAIL .....**I. L. Rep. 1 All. 1.**

1.—— § 390.—*Bail—Accused Persons—Convicted Persons.*] The Court of Sessions has no power under § 390 of the Criminal Procedure Code, Act X. of 1872, to admit to bail a person who has been convicted and sentenced to one month's rigorous imprisonment, such conviction being final and conclusive, and no appeal lying from it; a *convicted* person not being an *accused* person within the meaning of that section.

Per Turner, J.—As an appellate Court, a Sessions Judge has power on or after the admission of the appeal, to admit the convicted person to bail. REG. *v.* THAKUR PARSHAD...**I. L. Rep. 1 All. 151, 1876, F. B.**

1.—— *Chapter XXX.*, §§ 415 *to* 419.—*Restoration of Property*] *A.* was charged before the police with theft of certain property. The police, having made inquiries, considered that there had been no theft, and so reported to a Second Class Magistrate, pending whose order the police retained possession of the property alleged to have been stolen. The Magistrate, agreeing with the police, ordered the property to be restored to *A.*, but the District Magistrate, on the application of complainant, found that *A.* had removed the property, but not dishonestly, from *B.*, a deceased person, and ordered it to be delivered by the police to *B.*'s heirs. It was so given:—

Digitized by Google

CRIMINAL PROCEDURE CODE, ACT X. OF 1872—*contd.*

Held, that the provisions of Chapter XXX. of the Code of Criminal Procedure did not apply to such a case. Section 415 and the two succeeding sections contemplate proceedings preliminary to and independent of inquiry. On general principles, where there has been an inquiry or trial, and the accused person has been discharged or acquitted by a Criminal Court, that Court is bound to restore the property, the subject-matter of the investigation, into the possession of the person from whom it is taken, unless, as provided for in § 418, such Court is of opinion that any offence appears to have been committed regarding it, when such order as appears right for the disposal of the property may be made.

The Second Class Magistrate did not consider that any offence had been committed in respect of the property, and therefore § 419 gave the District Magistrate no jurisdiction to interfere, and his order was cancelled. But *held*, that the High Court could not direct the restoration of the property already delivered to the complainant under the illegal order of the Magistrate. *In re* ANNAPURNABAI. *Kemball* and *N. Harridas*, JJ...**I. L. Rep. 1 Bom. 630, 1877.**

2.—— §§ 415-419—*Act X. of* 1872, § 416-420—*Discharge of Accused for Want of Evidence—Judicial Proceeding.*] *A.* and *B.* were arrested by the police, and, after an investigation made by the police, were sent to the Magistrate for trial, under § 411 of the Penal Code, on charges of dishonestly receiving stolen Commissariat tea knowing it to be stolen. The Magistrate discharged the accused after recording evidence, as there was nothing to establish the fact that any tea had been stolen or missed from the Commissariat, and no claim on account of the tea had been made by the Commissariat department. But the Magistrate, considering that "the case against the accused was of the very gravest suspicion," and believing that the tea stolen was Commissariat property, ordered that "a proclamation under § 416 of the Criminal Procedure Code should issue regarding" the tea:—

Held, that the order of the Magistrate was really passed under § 418 of the Criminal Procedure Code, and the Magistrate believing that an offence had been committed regarding the property, the order was one within his competence. And it was not necessary in this case that the Magistrate should make the order in the form (referred to in § 420 of the Code) of a reference of the property to the Magistrate of the district, or to a Magistrate of a division of a district, as he was already competent to issue the proclamation referred to in § 416. EMPRESS *v.* NILAMBAR BABU. *Spankie*, J.....**I. L. Rep. 2 All. 276, 1879.**

S. C. under **Judicial Proceeding,** and § **297. 10.**

—— § 416—Judicial Proceeding—Issue of Proclamation.

See **Judicial Proceeding.**

EMPRESS *v.* NILAMBAR BABU...**I. L. Rep. 2 All. 276.**

—— §§ 418 and 419—Order as to Disposition of Stolen Property—Appeal.

See **Government Currency Note.**

EMPRESS *v.* JOGESSUR MOCHI...**I. L. Rep. 3 Cal. 379.**

—— §§ 426 and 432—Jurisdiction of Criminal Courts over Accused declared of Unsound Mind.

See **Lunatic.**

EMPRESS *v.* JOY HARI KOR . **I. L. Rep. 2 Cal. 356.**

—— § 439, Illustration (*a*).

See **Defamation.**

SIBHO PROSAD PANDHA.....**I. L. Rep. 4 Cal. 124.**

—— § 452 (*et seq.*)—*Joint Trial of separate Offences—Prejudice to Accused.*] The accused persons were tried on 27 charges, comprising the offences of theft, abetment of theft, and receiving stolen property in 1872-73; similar offences in 1873-74; similar offences in 1874-75; the giving and receiving of gratification to and by public servants in 1874-75; and finally the fabrication and abetment of fabrication of false evidence in 1876. One of the accused was convicted on two heads of charge, and the rest acquitted. The convict appealed against his conviction; and the Government appealed against his acquittal on the other heads, and against the acquittal of the rest.

Held, that the trial was irregular, under § 452 of the Criminal Procedure Code, and that the Court could not hear an appeal against the acquittal on each and all of the above charges, for

Digitized by Google

CRIMINAL PROCEDURE CODE, ACT X. OF 1872—*contd.*

that would be to re-try the case in the same irregular manner in which it had been tried in the Court below; but the High Court allowed the appeal in respect of all the offences alleged to have been committed in 1872-73 and 1873-74, and in respect of fabrication of evidence in 1876, to be withdrawn, and heard the appeal in respect of the offences of theft, abetment of theft, and receiving stolen property in 1874-75 only, it appearing that this course did not prejudice the accused persons, who had been fully and fairly tried for those offences.

Held, also, that in considering the evidence relating to these offences, the Court would not take into consideration the evidence recorded to prove the giving bribes to public servants in that year, in order to enable the alleged thefts to be committed, because, the accused having been tried and acquitted on those charges, the prosecution ought not to be allowed to withdraw its appeal as to those charges, and at the same time, in order to establish another offence, to introduce a subsidiary issue as to the correctness of the acquittal. But that the evidence relating to the alleged fabrication of evidence might be considered by the Court, that offence having been committed in Bombay and beyond the jurisdiction of the Sessions Court of Thana, whose acquittal of the accused in respect of that offence was therefore *coram non judice*, and did not prevent the Court from considering whether the fabrication had taken place. REG. *v.* HANMANTA. *Melvill* and *Kemball*, JJ...**I. L. Rep. 1 Bom. 610, 1877.**

S. C. under **Evidence. 2.**

—— § 454.

See **Conviction on several Charges. 1.**

REG. *v.* TUKAYA...**I. L. Rep. 1 Bom. 214.**

—— §§ 453 to 454—*Distinct Offences—Separate Charges.*] Section 453 of the Criminal Procedure Code (Act X. of 1872) modifies § 452, which requires a separate charge and a separate trial for every distinct offence, by allowing three charges of three distinct offences of the same kind and committed within one year of each other to be tried at the same time; but this does not mean that if at one time or within one year a man commits more than three distinct offences of the same kind, he shall not in one day be prosecuted for more than three such offences. EMPRESS *v.* DONONJOY BARAJ. *Ainslie* and *McDonnell*, JJ...**I. L. Rep. 3 Cal. 540; 1 Cal. Rep. 478, 1878.**

—— § 454.

See **Offence made up of several Offences.**

EMPRESS *v.* RAM ADHIN.....**I. L. Rep. 2 All. 139.**

—— § 454 — *Criminal Trespass — Mischief.*] Where a person committed a trespass with the intention of committing mischief, thereby committing criminal trespass, and at the same time committed mischief;—*Held*, that he could not, under Cl. iii. of § 454 of the Criminal Procedure Code (Act X. of 1872), receive a punishment more severe than might have been awarded for either of such offences. The provisions of that law do not in such a case prohibit the Court from passing sentence in respect of each offence established. EMPRESS *v.* BUDH SINGH. *Turner*, J.....**I. L. Rep. 2 All. 101, 1879.**

S. C. under **Criminal Trespass.**

—— § 457—Acquittal by Jury but with Finding of Facts amounting to another Offence—Power of High Court on Reference.

See ante, § **263.**

EMPRESS *v.* HARAI MIRDHA.....**I. L. Rep. 3 Cal. 189.**

—— § 466—Sanction to prosecute a Mahalkari.

See **Sanction to Prosecute. 4.**

IMPX. *v.* LUKSHMAN...**I. L. Rep. 2 Bom. 481.**

—— § 468—Sanction to prosecute—Relative Position of Magistrate and Sessions Judge.

See **Sanction to Prosecute. 4. 5. 6.**

—— §§ 468-469.

See **Sanction to Prosecute. 1.**

BARKAT-ULLAH-KHAN *v.* RENNIE...**I. L. Rep. 1 All. 17.**

—— §§ 471, 472, 473—Contempt of Court.

See **False Evidence.**

REG. *v.* GAJI...**I. L. Rep. 1 Bom. 311.**

—— §§ 471, 472—Power of Sessions Court to commit to itself Case not triable exclusively by Court of Sessions.

See **Jurisdiction. 16.**

EMPRESS. *v.* FUTTEH TYABKHAN...**I. L. Rep. 4 Cal. 570.**

Digitized by Google

CRIMINAL PROCEDURE CODE, ACT X. OF 1872—*contd.*

1. —— § 471.—*False Evidence—Jurisdiction.*] Section 471 of the Criminal Procedure Code, Act X. of 1872, does not deprive the Court, which possesses the power of trying an offence mentioned in §§ 467 to 469, of the power of trying it when committed before itself. REG. *v.* GUR BAKSH. *Pearson*, J...**I. L. Rep. 1 All. 193, 1876.**

Overruled, *see* § **473. 2**, *post.*

REG. *v.* KULTARAN SINGH...**I. L. Rep. 1 All. 129.**

REG. *v.* JAGAT MAL...**Ibid. 162.**

REG. *v.* KASHMIRI LAL.**Ibid. 625.**

2. —— § 471.—*Act XXIII. of* 1861, § 16—*Order sending Case to Magistrate for Inquiry into Offence of giving False Evidence—Preliminary Inquiry—Vagueness of Charge—Abetment.*] Although § 16 of Act XXIII. of 1861 gives Civil Courts powers similar to those conferred on Civil and Criminal Courts alike by § 47 of Act X. of 1872, yet the whole law is now embodied in § 471 of the latter Act, and the jurisdiction of the High Court to interfere is not affected by a suggestion that the order complained of was or might have been, made under § 16 of Act XXIII. of 1861, and not under § 471 of Act X. of 1872.

In a suit brought to recover possession of certain property, the Judge decided one of the issues raised, in the plaintiff's favour, but on the important issues as to whether the plaintiff ever had possession, he found for the defendant. The plaintiff was not examined, but on the issue as to possession he called two witnesses. The Judge disbelieved their statements, and considering that the plaintiff had failed to prove his case, he gave judgment for the defendant, without requiring him to give evidence on that issue. In the concluding paragraph of his judgment the Judge directed the depositions of the two witnesses above referred to, together with the English memoranda of their evidence, to be sent to the Magistrate with a view to his inquiring whether or not they had "voluntarily given false evidence in a judicial proceeding," and he further directed the Magistrate to inquire whether or not the plaintiff had abetted the giving of false evidence on the ground that as the witnesses were the plaintiff's servants he must personally have influenced them, and also to inquire whether the plaint which the plaintiff had attested, contained averments which the plaintiff knew to be false. On a motion to quash this order:—

Held, that under § 471 of Act X. of 1872, the Judge has no power to send a case to the Magistrate except when, after making such preliminary inquiry as may be necessary, he is of opinion that there is sufficient ground, *i.e.*, ground of a nature higher than mere surmise, for directing judicial inquiry into the matter of a specific charge.

There is no such legal presumption as that because the plaintiff's witnesses are his own servants, he must personally have influenced them so as to make him liable for abetting the giving of false evidence, even if they have done so.

The Judge was bound to indicate the particular statements or averments in respect of which he considered that there was ground for a charge into which the Magistrate ought to inquire. Something more than a mere indication that a witness has spoken falsely is needed before a Civil Court is justified in initiating a prosecution for giving false evidence. There must be evidence of a direct and substantial nature before the Court, evidence going to show that the statement made by the witness is absolutely false; and the Judge, having made no preliminary inquiry as was necessary, and the order being too vague and general in its character, such order was quashed. *Kali Prosunno Bagchee* (23 W. Rep. Cr. Rul. 39) followed. REG. *v.* BAIJOO LALL. *Macpherson* and *Morris*, JJ...**I. L. Rep. 1 Cal. 450, 1876.**

1. —— § 473.—*Contempt of Court — Nuisance—Injunction to discontinue.*] Section 473 of the Code of Criminal Procedure (Act X. of 1872), which, except as therein provided, forbids the Court to try any person for an offence committed in contempt of its own authority, is not limited to offences falling under Chapter X. of the Penal Code, but extends to all contempts of Court.

A Magistrate, therefore, cannot try a person for the continuance of a nuisance after an injunction issued by himself to discontinue it. REG. *v.* PARSAPA MAHADEVAPA. *Melvill* and *N. Harridas*, JJ...**I. L. Rep. 1 Bom. 339, 1876.**

2. —— § 473.—*Contempt of Court.—Offence against Public Justice.*] An offence against public justice is not an offence in contempt of

Digitized by Google

CRIMINAL PROCEDURE CODE, ACT X. OF 1872—*contd.*

Court within the meaning of § 473 of the Criminal Procedure Code, Act X. of 1872; but the Court, Civil or Criminal, which is of opinion that there is sufficient ground for inquiring into a charge mentioned in §§ 467 to 469 of that Act, may not, except as is provided by § 472, try the accused person itself for the offence charged.

REG. *v.* KULTARAN SINGH...**I. L. Rep. 1 All. 129.**

REG. *v.* JAGAT MAL...**I. L. Rep. 1 All. 162.**

Overruled by EMPRESS *v.* KASHMIRI LAL... **Ibid. 625, 1877,**

where the Full Bench (*Stuart*, C. J., dissenting) decided that an offence under § 193 of the Penal Code, being an offence in contempt of Court within the meaning of § 473 of Act X of 1872, could not, under that section, be tried by the Magistrate before whom such offence was committed.

See **False Evidence.**

REG. *v.* GAJI...**I. L. Rep. 1 Bom. 311.**

3.—— § 473.—*Construction.*] The prohibition in § 473 of Act X. of 1872 is a personal prohibition, the mischief to be prevented being that the same person should not decide a matter which he may have already prejudged.

Therefore, where proceedings were instituted against a person who had made a false charge against the prosecutor, before the Magistrate to whom such false charge was made, and who had sanctioned the prosecution, but before the completion of the inquiry such Magistrate was succeeded in office by another:—.

Held, that there was nothing to prevent the Magistrate succeeding from trying the case. ANON. *Innes*, C.J. (Offg.), and *Busteed*, J...**I. L. Rep. 1 Mad. 305, 1877.**

4.——*Contempt of Court—Penal Code*, § 174—*Criminal Procedure Code, Act X. of 1872*, §§ 471, 473.] Where a settlement officer, who was also a Magistrate, summoned, as settlement officer, a person to attend his Court, and such person neglected to attend, and such officer, as a Magistrate, charged him with an offence under § 174 of the Penal Code, and tried and convicted him on his own charge:—

Held, that such conviction was, with reference to §§ 471 and 473 of the Criminal Procedure Code, Act X. of 1872, illegal. EMPRESS *v.* SUKHARI. *Oldfield*, J...**I. L. Rep. 2 All. 405, 1879.**

—— § 489.—*Security to keep the Peace—Penal Code*, §§ 503, 506—*Criminal Intimidation.*] The operation of the words "taking other unlawful measures with the evident intention of committing a breach of the peace" in § 489 of the Criminal Procedure Code, Act X. of 1872, is not limited to riot, assault, actual breach of the peace, or abetting the same, or unlawful assembly, but is intended to comprehend a wider range of offences, and it must be for the Magistrate or Court to decide in each case, whether from the nature of the charge upon which conviction takes place, there has been direct force or violence to the person, or conduct inducing an apprehension of force or violence, or a direct threat of force or violence, or a provocation to the commission of force or violence; but those words do not include the offence of intimidation by threatening to bring false charges.

Where, therefore, a person was convicted under §§ 503 and 506 of the Penal Code of such offence:—*Held*, that the Magistrate by whom such person was convicted could not, under § 489 of the Criminal Procedure Code, require him to give a personal recognizance to keep the peace. EMPRESS *v.* RAGUBA. *Straight*, J...**I. L. Rep. 2 All. 351, 1879.**

—— § 502—*Proceedings on Forfeiture of Recognisance—Evidence—Right of Cross-Examination.*] According to the fair construction of § 502 of Act X. of 1872, a Magistrate is not justified in forfeiting a recognizance under that section, unless the party charged with a breach of the peace has had an opportunity of cross-examining the witnesses upon whose evidence the rule to show cause has been issued.

That opportunity may arise either upon the prosecution of the accused person before the Magistrate for a breach of the peace, or for any other offence, in which case the accused would have the right to cross-examine the witnesses for the prosecution; or it may arise upon a substantive application made to the Magistrate to forfeit the recognizance; in which case the witnesses on whose evidence the rule is granted ought to be present and subject to be cross-examined by the accused, on the occasion when cause is shown

Digitized by Google

CRIMINAL PROCEDURE CODE, ACT X. OF 1872—*contd.*

against the rule. EMPRESS *v.* NOBIN CHUNDER DUTT.....**I. L. Rep. 4 Cal. 865 ; 4 Cal. Rep. 242, 1879, F. B.**

—— § 505.

See **Security for Good Behaviour.**

EMPRESS *v.* DEDAR SIRCAR...**I. L. Rep. 2 Cal. 384.**

—— § 505—Procedure—Security for Good Behaviour.

See **Whipping Act. VI. of 1864, §§ 2 and 3.**

EMPKESS *v.* PARTAB...**I. L. Rep. 1 All. 666.**

—— § 518—Superintendence of High Court.

See **Stat. 24 and 25 Vict., Ch. 104, § 15. 5.**

CHUNDER NATH SEN...**I. L. Rep. 2 Cal. 293.**

— § 530.

See **Land held by Joint Owners.**

EMPRESS *v.* RAJCOOMAR SINGH ... **I. L. Rep. 3 Cal. 573.**

— § 530—Tenant from Year to Year—Notice to quit.

See **Ejectment. 1.**

RAM ROTTON *v.* KETRO KALLY...**I. L. Rep. 4 Cal. 339.**

—— § 530.—*Constructive Possession.*] In a case of disputed possession between two rival zemindars, constructive possession through intermediate holders (ticcadars) to whom the ryots pay rents, is not such possession as is contemplated by § 530 of the Criminal Procedure Code. EMPRESS *v.* THACOOR DYAL SING. *Ainslie* and *McDonnell*, JJ...**I. L. Rep. 3 Cal. 320, 1878.**

2.—— § 530.—*Possession*—Butwarra *Proceedings—Possession given by Ameen, Effect of.*] The possession given by an Ameen in a *butwarra* proceeding is simply one of ownership, and not of occupancy. Such possession, therefore, cannot, in proceedings under § 530 of the Criminal Procedure Code (Act X. of 1872) be held to oust tenants occupying lands previously to such delivery of possession. MACKENZIE *v.* SHERE BAHADOOR SAHI. *Jackson* and *McDonnell*, JJ....**I. L. Rep. 4 Cal. 378, 1878.**

3. —— § 530.—*Possession—Ouster without Authority of Civil Court.*] On the death of *A.*, his property was vested in *B.*, his trustee. One *K.*, who claimed the property on behalf of his son, obtained a certificate under Act XXVII. of 1860, on the strength of which he induced a number of ryots to give him *Kabuliats*. The Magistrate, hearing that there was likely to be a breach of the peace, instituted proceedings under § 530 of the Criminal Procedure Code (Act X. of 1872), calling on *K.* and *B.* to establish their possession, and found that *K.* in asserting his possession under the certificate, was unable to obtain possession of the dwelling-house and cutcherry, part of the property of *A.*, but that he had obtained possession of the villages, by inducing the ryots to acknowledge their tenancy from him and pay him the rents due, so establishing the relation of landlord and tenant; and the Magistrate made an order confirming *K.* in possession of the villages, and *B.* of the remainder of the property :—

Held, that *B.*, being lawfully in possession on the death of *A.*, until there had been a yielding up of possession by *B.*, or the person to whom he chose to make over the property, anybody coming forward to take it without the sanction of the Civil Court was, so far as the Magistrate was concerned, in the position of a trespasser.

If a breach of the peace was imminent, the Magistrate ought to have bound over *K.* to maintain the peace, and not to have ousted *B.*, whose possession was undoubted. If of two parties—the one lawfully in possession, and the other struggling for possession—the latter succeeds in ousting the former, the Magistrate, in a proceeding under § 530, is not to recognize the party so ousting the other as the one to be maintained in possession. He must look to possession which may be termed peaceful, and must go back to the time when the dispute originated, and not to the result of the dispute itself. *In the matter of the Petition of* MOHESH CHUNDER KHAN. *Ainslie* and *Maclean*, JJ...**I. L. Rep. 4 Cal. 417, 1878.**

4. —— § 530.—*Powers of Magistrate—Notice to Parties to attend, Form of—Intervenor.*) A Magistrate, being led to the belief, from proceedings before him, that there was a likelihood of a breach of the peace in consequence of a dispute about certain lands between *A.* and *B.*, directed proceedings to be held under § 530 of Act X. of 1872, and caused a notice to be served on *A.* and *B.* Prior to the hearing *A.* and *B.*

Digitized by Google

CRIMINAL PROCEDURE CODE, ACT X. OF 1872—*contd.*

came to an amicable settlement of their dispute; but, in the mean time, shortly before this settlement, one *C.* came in and put forward a claim to possession of a portion of the land covered by the Magistrate's notice, and eventually the Magistrate made an order declaring *C.* to be the party in possession of the part claimed by him:—

Held, that a proceeding, such as is required by § 530 of Act X. of 1872, was a necessary preliminary to the jurisdiction of the Magistrate to make an order. The power given to Magistrates to make a binding declaration as to the possession of property is an exceptional one, and § 530 limits the exercise of this power to cases in which the Magistrate is satisfied that a dispute, serious enough to be likely to induce a breach of the peace, exists; and it is this likelihood, with the consequent necessity for immediate action, which alone warrants action by the Magistrate under Chapter XL., and the Magistrate is obliged to certify the grounds on which he believes in the existence of a likelihood of a breach of the peace by recording them in a proceeding.

Though no particular mode is prescribed, of giving notice to parties to attend before the Magistrate under this section, yet the language of the section shows that the notice shall be addressed to known individuals—the parties indicated in the information on which the Magistrate's action is based—and not be in the form of a public notice or proclamation calling upon all parties concerned, to attend the Magistrate's Courts. There is no provision in the Criminal Procedure Code for allowing an intervenor to come in in the middle of proceedings held under § 530. As to such third party the Magistrate has no information of any dispute likely to lead to a breach of the peace between him and any one else, and, therefore, the only ground on which he could enter upon an inquiry as to the possession of such third party at the date of the commencement of the pending proceedings is wanted. The order, therefore, relating to *C.*'s possession was quashed, as having been made without jurisdiction. *In the matter of the Petition of* KUNUND NARAIN BHOOP. *Ainslie* and *Broughton*, JJ...**I. L. Rep. 4 Cal. 650; 3 Cal. Rep. 551, 1878.**

5.——§ 530.—*Bench of Magistrates—Jurisdiction Act X. of 1872*, § 50.] A Bench of Magistrates has no power to deal with cases under § 530 of the Criminal Procedure Code (Act X. of 1872). A Bench may be empowered under § 50 of that Act "to try such cases or such classes of cases only and within such limits as the Government may direct." The definition of the term "trial" shows that it refers only to trials for "offences," and not to miscellaneous matters such as those coming within § 530. SUFFERUDDIN *v.* IBRAHIM. *Markby* and *Prinsep*, JJ...**I. L. Rep. 3 Cal. 754; 2 Cal. Rep. 263, 1878.**

—— Chapter XII.

See **Maintenance.**

LAL DAS *v.* NEKUNJO BHAISHIANI. **I. L. Rep. 4 Cal. 374.**

CRIMINAL INTIMIDATION—Conviction of—by Threatening to bring False Charge—Convict cannot be required to give Security to keep the Peace.

See **Criminal Procedure Code, Act X. of 1872, § 489.**

EMPRESS *v.* RAGHUBAR.....**I. L. Rep. 2 All. 351.**

CRIMINAL TRESPASS.

See **Land held by Joint Owners.**

EMPRESS *v.* RAJCOOMAR SINGH... **I. L. Rep. 3 Cal. 573.**

1.——*Penal Code*, § 447.] *A.*, who had been warned off *B.*'s lands, subsequently having shot a deer near the boundary of *B.*'s land, and the deer having run on to *B.*'s land, followed it on to such land for the purpose of killing it:—

Held, that his doing so did not constitute criminal trespass. CHUNDER NARAIN *v.* FARQUHARSON *Birch* and *Mitter*, JJ...**I. L. Rep. 4 Cal. 837, 1879.**

2.——*Penal Code*, § 441—*Public Ferry.*] A person plying a boat for hire at a distance of three miles from a public ferry, cannot be said, with reference to such ferry, to commit "criminal trespass" within the meaning of § 441 of the Penal Code. MUTHRA *v.* JAWAHIR. *Spankie*, J.....**I. L. Rep. 1 All. 527, 1877.**

S. C. under **Disobedience of Order of Public Servant.**

3.——*Penal Code*, § 447—*Infringement of Exclusive Right of Fishery in a Public River.*] Where it was proved that the accused had fished

Digitized by Google

CRIMINAL TRESPASS—*contd.*

in a public river at a place where the prosecutor had the exclusive right of fishery :—

Held, that this did not constitute the offence of criminal trespass within the meaning of § 447 of the Penal Code. Though a fishery is property, a man who fishes in a public river does not enter upon property in the possession of another, though he may have no right to fish there. The river on which the accused entered being a public one was not in the exclusive possession of any one, and a right of fishery is not property of such a nature as that a man who unlawfully infringes that right can be said to enter on property in the possession of another within the meaning of the above section. EMPRESS *v.* CHARN NAIYAK. *Markby* and *Prinsep*, JJ..... **I. L. Rep. 2 Cal. 354, 1877.**

4. —— *Mischief—Penal Code*, §§ 425 *to* 441 *—Claim of Right.*] If a person enters on land in the possession of another in the exercise of a *bonâ fide* claim of right, but without any intention to intimidate, insult, or annoy the person in possession or to commit an offence, then, although he may have no right to the land, he cannot be convicted of criminal trespass, because the entry was not made with any such intent as constitutes the offence. So also if a person deals injuriously with property in the *bonâ fide* belief that it is his own, he cannot be convicted of the offence of mischief, because his act was not committed with intent to cause wrongful loss or damage to any person.

But the mere assertion of a claim of right is not in itself an answer to charges of criminal trespass and mischief. It is the duty of the Criminal Court to determine what was the intention of the alleged offender, and if it arrives at the conclusion that he was not acting in the exercise of a *bonâ fide* claim of right, then it cannot refuse to convict the offender, assuming that the other facts are established which constitute the offence. EMPRESS *v.* BUDH SINGH. *Turner*, J. .....**I. L. Rep. 2 All. 101, 1879.**
S. C. under **Criminal Procedure Code, Act X. of 1872, § 454.**

5. ——*Penal Code*, §441—*Criminal Trespass.*] The word "annoy" in § 441 of the Penal Code, must be taken to mean annoyance that would reasonably and generally affect an ordinary person, not what would specially and exclusively annoy a particular person. It does not necessarily follow that because an entry on property

CRIMINAL TRESPASS—*contd.*

in the possession of another is illegal, it is therefore, and without more, criminal trespass. The intent with which the act is done must be established by clear and convincing evidence of such character and description as the particular nature of the case requires.

The possession contemplated by that section, of the person against whom it is alleged that the offence of criminal trespass has been committed, must be actual in the sense and meaning of § 530 of the Criminal Procedure Code, Act X. of 1872.

Re-entry into or remaining on land from which a person has been ejected by civil process, or of which possession has been given to another for the purpose of asserting rights he may have solely or jointly with others, is not criminal trespass unless the intent to commit an offence, or intimidate or annoy, is conclusively proved. Certain immoveable property was the undivided property of *C.*, *G.*, and another. *R.* obtained a decree against *G.* for possession of such property, and possession was accordingly delivered to him in execution of that decree, under § 264 of Act X. of 1877. *C.*, in good faith, with the intention of asserting her right, and without any intention to intimidate, insult, or annoy *R.*, or to commit an offence, and *G.*, in like manner, with the intention of asserting the rights of his co-owners, remained on the property :—

Held that, under the circumstances, they could not be convicted of criminal trespass.

In the matter of the Petition of GOBIND PRASAD. *Straight*, J...**I. L. Rep. 2 All. 465, 1879.**

CROPS—Standing—Immoveable Property for purposes of Act IX. of 1871.
See **Standing Crops.**
PANDAH GAZI *v.* JENNUDDI...**I. L. Rep. 4 Cal. 665.**

—— Suit for—Value of—Jurisdiction of Small Cause Court.
See **Bengal Act VIII. of 1869, § 98.**
HYDER ALI *v.* JAFAR ALI ...**I. L. Rep. 1 Cal. 183.**

CROSS-DECREES—Act X. of 1877, § 246.
See **Execution of Decree. 3.**
MURLI DHAR *v.* PARSOTAM DAS... **I. L. Rep. 2. All. 91.**

Digitized by Google

CROSS-EXAMINATION—On Affidavit.

See **Practice—Civil. 1.**

KENNELLY *v.* WYMAN...**I. L. Rep. 1 Cal. 178.**

—— Right of—of Witnesses on whose Evidence Rule issued to show cause why Recognizance should not be forfeited.

See **Criminal Procedure Code, Act X. of 1872, § 502.**

EMPRESS *v.* NOBIN CHUNDER DUTT. **I. L. Rep. 4 Cal. 865.**

CROSS-EXAMINATION OF WITNESSES FOR PROSECUTION—Right of Accused to recall for.

See **Practice—Criminal. 1.**

EMPRESS *v.* BALDEO SAHAI...**I. L. Rep. 2 All. 258.**

CROWN DEBT—Court Fees—Pauper Suit.

See **Civil Procedure Code, Act VIII. of 1859, § 309. 1. 2.**

GANPAT *v.* COLLECTOR OF CANARA. **I. L. Rep 1 Bom. 7.**

GULZARI LAL *v.* COLLECTOR OF BAREILLY...**I. L. Rep. 1 All. 596.**

See **Prerogative of the Crown.**

COLLECTOR OF MORADABAD *v.* MUHAMAD...**I. L. Rep. 2 All. 196.**

CRUELTY.

See **Restitution of Conjugal Rights. 1.**

YAMUNABAI *v.* N. M. PENDSE...**I. L. Rep. 1 Bom. 164.**

CULPABLE HOMICIDE.

See **Murder.**

REG. *v.* GOVIND...**I. L. Rep. 1 Bom. 342.**

REG. *v.* BALAPA...**I. L. Rep. 1 Bom. 639.**

See **Penal Code, § 304*a*.**

EMPRESS *v.* SAFATULLA...**I. L. Rep. 4 Cal. 815.**

REG. *v.* ACHARJYA...**I. L. Rep. 1 Mad. 224.**

—— Exposure of Infant with intent to abandon —Death caused by—Separate Sentences.

See **Conviction on several Charges. 3.**

EMPRESS *v.* BANNI...**I. L. Rep. 2 All. 349.**

CULPABLE HOMICIDE, CONVICTION OF, ON CHARGE OF MURDER.

See **Appeal—Criminal. 4.**

EMPRESS *v.* JOODOONATH GANGOOLI...**I. L. Rep. 2 Cal. 273.**

CULPABLE HOMICIDE—*Penal Code*, §§ 304, 304A, 336, 337, *and* 338—*Rashnes—Negligence.*] Section 304A of the Penal Code does not apply to a case in which there has been the voluntary commission of an offence against the person. If a man intentionally commits such an offence, and consequences beyond his immediate purpose result, it is for the Court to determine how far he can be held to have the knowledge that he was likely by such act to cause the actual result. If such knowledge can be imputed, the result is not to be attributed to mere rashness; if it cannot be imputed, still the wilful offence does not take the character of rashness, because its consequences may have been unfortunate. Acts probably or possibly involving danger to others, but which in themselves are not offences, may be offences under §§ 336, 337, 338, or 304A of the Penal Code, if done without due care to guard against the dangerous consequences. Acts which are offences in themselves, must be judged with regard to the knowledge, or means of knowledge, of the offender, and placed in their appropriate place in the class of offences of the same character.

In judging of knowledge had by the accused, the circumstances must be considered; the blow that to one person, or under ordinary circumstances, may not, in the ordinary course of nature, be likely to cause death, may yet be imminently dangerous to another, or under special circumstances. To kick a girl of tender age with such force as to cause rupture of the abdomen in a healthy subject, is an act of such a nature that no reasonable man could be ignorant of the likelihood of its causing death. EMPRESS *v.* KETABDI MUNDUL. *Ainslie* and *Broughton*, J.J...**I. L. Rep. 4 Cal. 764, 1879.**

CULTIVATING RYOT—Ejectment of.

See **Partition Suit.**

SAMINDA PILLAI *v.* SUBBA REDDIAR...**I. L. Rep. 1 Mad. 333.**

Digitized by Google

CURRENCY NOTE—Theft of—Title of Original Owner.

See **Government Currency Note.**

EMPRESS *v.* JOGESSUR MOCHI ..**I. L. Rep. 3 Cal. 379.**

CUSTODY OF ILLEGITIMATE CHILD.

See **Maintenance.**

LAL DAS *v.* BHAI SHIANI...**I. L. Rep. 4 Cal. 374.**

CUSTODY OF INFANT CHILDREN—Loss of Caste does not deprive Father of Right to.

See **Loss of Caste.**

KANCHI RAM *v.* BIDDYA RAM...**I. L. Rep. 1 All. 549.**

CUSTODY OF MINOR CHILDREN.

See **Mahomedan Law—Divorce. 1.**

HAMID ALI *v.* MITIAZAN...**I. L. Rep. 2 All. 71.**

——Prostitution disqualifies Legal Guardian for Right of.

See **Mahomedan Law—Guardian.**

ABASI *v.* DUNNE.....**I. L. Rep. 1 All. 598.**

CUSTODY OF SERVANT.

See **Contract. 15.**

BIDDOMOYE DABEE *v.* SITTARAM... **I. L. Rep. 4 Cal. 497.**

CUSTOM.

See **Pre-emption. 5.**

RAJA RAM *v.* BANSI...**I. L. Rep. 1 All. 207.**

—— Alienation of Trusteeship for Pecuniary Advantage of Trustee.

See **Alienation of the Right of Management of a Pagoda.**

RAJAH VURMAH VALIA *v.* RAVI VURMA MUTHA...**L. Rep. 4 I. A. 76 ; I. L. Rep. 1 Mad. 235.**

—— Appeal.

See **Pre-emption. 10. 12.**

CHADAMI LAL *v.* MUHAMMAD BAKSH.....**I. L. Rep. 1 All. 563.**

MARATIB ALI *v.* ABDUL HAKIM...**I. L. Rep. 1 All. 567.**

CUSTOM—*contd.*

—— Caste—For a Married Woman to contract Second Marriage during Life-time of her first Husband and without his Consent.

See **Penal Code, § 494.**

REG. *v.* SAMBHU... **I. L. Rep. 1 Bom. 347.**

See **Custom. 5.**

—— Divorce.

See **Hindu Law—Divorce.**

KUDOMEE *v.* JOTEERAM.....**I. L. Rep. 3 Cal. 305.**

—— Dower.

See **Mahomedan Law—Dower. 2. 3.**

EIDAN *v.* MAZHAR HUSAIN...**I. L. Rep. 1 All. 483.**

TAUFIK-UN-NISSA *v.* GHULAM KAMBAR...**I. L. Rep. 1 All. 506.**

—— Family—Primogeniture.

See **Hindu Law—Inheritance—Primogeniture.**

CHOWDHRY CHINTAMUN *v.* MUSST. NOWLUKHO...**I. L. Rep. 2 I. A. 263 ; L. Rep. 1 Cal. 153.**

—— among Gosavis—Recognizing Legitimacy of Illegitimate Children, Offspring of Adultery—Void.

See **Custom. 5.**

—— Immoral.

See **Custom. 5.**

See **Penal Code, § 494.**

REG. *v.* SAMBHU...**I. L. Rep. 2 Bom. 140.**

See **Immoral Custom**

CHINNA UMMAYI *v.* TEGARAI CHETTI...**I. L. Rep. 1 Mad. 168.**

—— for Kaziship to be Hereditary.

See **Kazi. 1. 2.**

JAMAL AHMED *v.* JAMAL JALLAL... **I. L. Rep. 1 Bom. 633.**

DAUDSHA *v.* ISMALSHA.....**I. L. Rep. 3 Bom. 72.**

—— Occupancy Rights transferable by.

See **Transfer of a Portion of Occupancy holding.**

TIRTHANUND THAKOOR *v.* MUTTY LALL MISSER...**I. L. Rep. 8 Cal. 774.**

Digitized by Google

CUSTOM—*contd.*

—— *Onus Probandi* of—among Khojas opposed to Hindu Law of Inheritance.

See **Khojas.**

RAHIMATBAI *v.* HIRBAI.....**I. L. Rep. 3 Bom. 34.**

—— Pagoda—Alienation of Right of Management of.

See **Alienation of Right of Management of a Pagoda.**

RAJAH VURMAH VALIA *v.* RAVI VURMAH MUTHA ... **L. Rep. 4 I. A. 76; I. L. Rep. 1 Mad. 235.**

—— Proof of.

See **Khojas.**

RAHIMATBAI *v.* HIRBAI.....**I. L. Rep. 3 Bom. 34.**

—— Religious Brotherhood—*Mohunts.*

See **Mohunt.**

RAJAH MUTTU RAMALINGA *v.* PERANAYAGUM...**L. Rep. 1 I. A. 209.**

1. —— *Conditions for Validity of*—] "Among the conditions essential for establishing a custom are that the custom is of remote antiquity, that it has been continued and acquiesced in, that it is reasonable, and is certain and not indefinite in its character." *Per Oldfield*, J., in LALA *v.* HIRA SINGH...**I. L. Rep. 2 All. 49-51, 1878.**

2. —— *Essentials of*—] A custom is a rule which in a particular family, or in a particular district, has from long usage obtained the force of law. It must be ancient, certain and reasonable, and, being in derogation of the general rules of law, must be construed strictly. HURPURSHAD *v.* SHEO DYAL...**L. Rep. 3 I. A. 259-285.**

S. C. under **Oudh Proclamation in 1858, para. 8.**

3. —— *Limitation.*] No custom can be allowed to override the positive prescriptions of the Limitation Act. MOHANLAL JECHAND *v.* AMRATLAL BECHARDAS. *West* and *Pinhey*, JJ...**I. L. Rep. 3 Bom. 174, 1878.**

S. C. under **Easement. 2.**

4.—— *Proof of—Manorial Dues and Cesses.*] The plaintiffs, zemindars, sued for a declaration of their ancient right, as against all the tenants

CUSTOM—*contd.*

of a certain village, to appropriate all trees of spontaneous growth, and the fruit of other trees planted by the tenants; also to receive as manorial tribute a certain number of ploughs annually, and a certain offering of poppy seed and other farm produce on the occasion of the marriages of certain persons of the lower class of tenants, with a further right to levy a certain proportion of the produce of the sugarcane manufactories and fields in the village:—

Held, (1) that where a custom regarding several cesses is alleged, the existence of the custom regarding each cess should be tried as a separate issue: (2), that parol evidence given generally as to the existence of the custom should be tested by ascertaining on what grounds the opinion of each witness is based: (3), the most cogent evidence of custom is that afforded by the enumeration of instances in which the alleged custom has been acted on, and the proof afforded by judicial or revenue records or private accounts and receipts that the custom has been enforced: and (4), that a custom to be good must be definite. LACHMAN RAI *v.* AKBAR KHAN. *Pearson* and *Turner*, JJ...**I. L. Rep. 1 All. 440, 1877.**

5.——*Among Gosavis—Immoral Custom.*] A custom among Gosavis to recognize a right of heirship in the son of a Gosavi by a woman who, in the life time of her previous husband, and without his consent, has married the Gosavi would be a bad custom, and such as could not be treated by Courts of Justice as valid. NARAYAN BHARTI *v.* LAVING BHARTI. *Westropp*, C.J., and *Melvill*, J.....**I. L. Rep. 2 Bom. 140, 1877.**

S. C. under **Hindu Law — Inheritance—Illegitimate Son. 5.**

CY-PRES—Application of Doctrine of—when Residuary Bequest to Charity.

See **Will. 11.**

MAYOR OF LYONS *v.* ADVOCATE-GENERAL OF BENGAL.....**L. Rep. 3 I. A. 32; I. L. Rep. 1 Cal. 303; L. Rep. 1 App. Ca. 91.**

CYPRUS—Offence committed at—Jurisdiction.

See **Offence committed at Cyprus.**

EMPRESS *v.* SARMUKH SINGH...**I. L. Rep. 2 All. 218.**

Digitized by Google

DAMAGE BY OVERFLOW OF WATER FROM TANKS.

See **Tanks.**

MADRAS RAILWAY CO. *v.* ZEMINDAR OF CARVATENAGARUM... **L. Rep. 1 I. A. 364.**

DAMAGES—for Arrest.

See **Damages. 4.**

—— Against an Intruder into the Office of *Chalwady*.

See **Disturbance of Office. 1.**

SHANKARA *v.* HANMA...**I. L. Rep. 2 Bom. 470.**

—— Against an Intruder into an Office—*Watandar Joshi*.

See **Disturbance of Office. 2.**

RAJA SHIVAPPA *v.* KRISHNABHAT.. **I. L. Rep. 3 Bom. 323.**

—— Infringement of Patent.

See **Infringement of Patent.**

SHEEN *v.* JOHNSON.....**I. L. Rep. 2 All. 368.**

—— Liability of Execution Creditor in—for Wrongful Seizure.

See **Liability of Execution Creditor in Damages for Wrongful Seizure.**

GOPAL MAHAD PATIL *v.* GOCULDAS KHIMJI...**I. L. Rep. 3 Bom. 74.**

—— Measure of—Wrongful Attachment of Property of Third Person—Loss of Property while under Attachment.

See **Liability of Execution Creditor in Damages for Wrongful Seizure.**

GOPAL MAHAD PATIL *v.* GOCULDAS KHIMJI...**I. L. Rep. 3 Bom. 74.**

—— Wrongful Dismissal.

See **Master and Servant. 1.**

MACGILLIVRAY *v.* JOKAI ASSAM TEA CO...**I. L. Rep. 2 Cal. 33.**

1. —— *Suit for—Joint Undivided Proprietors—Revenue Sale.*] No suit for damages as between joint owners of undivided estates will lie, in consequence of the sale of the whole estate through the default of one or more of such owners in paying their shares of the Government revenue. *Odoit Roy* v. *Radha Pandey* (7 W. Rep. 72) followed. LALLA RAMESSHUR DAYAL SINGH *v.* LALLA BISSA DAYAL, *Kemp* and *Pontifex*, JJ.....**I. L. Rep. 1 Cal. 406, 1876.**

DAMAGES—*contd.*

2. —— *Defamation—Nominal Damages.*] In a suit for defamation, if a Court thinks that though the words complained of may have been spoken by the defendant, yet that the plaintiff is not entitled to damages, he having already criminally prosecuted and procured the conviction of the defendant for the defamation,—and that the suit is therefore, under the circumstances, vexatious, it is not bound to award the plaintiff even nominal damages, but may dismiss the suit. FUTEEK PAROOEE *v.* MOHENDER NATH MOZOOMDAR. *Markby* and *Mitter*, JJ... **I. L. Rep. 1 Cal. 385, 1876.**

S. C. under **Costs. 2.**

3. —— *Measure of—Action for Breach of Contract—Collateral Contract.*] The defendant entered into a contract with the plaintiffs to purchase from them a certain quantity of gunny bags, of which the defendant was to take delivery at certain stated intervals. On failure by the defendant to take delivery, the plaintiffs brought a suit for breach of the contract, estimating the damages at the difference between the contract price and the market prices on the days when the defendants ought to have taken delivery. It was proved that the plaintiffs never had the goods in their possession, but that they could have obtained them from a third person with whom they had a contract, and it was found that they were ready and willing to deliver them at the times contracted for.

The Lower Court held that the measure of damages was the difference between the contract price of the bags, and the amount which it cost the plaintiffs under their collateral contract to procure and deliver them.

Held on appeal, reversing the decision of the Court below, that though it was right to inquire into the arrangements between the plaintiffs and the person with whom they had their collateral contract for the supply of bags, in order to ascertain whether the plaintiffs were ready and willing to deliver the bags; yet on that question being decided in their favour, the terms of that arrangement did not effect the question of damages as between the parties to the suit; and that the plaintiffs were entitled to

Digitized by Google

DAMAGES—*contd.*

recover, according to the ordinary and well established rule in cases of a breach of contract to take delivery of goods, the difference between the contract price and the market prices at the dates of failure by the defendant to take delivery. COHEN *v.* CASSIM NANA. *Garth*, C.J., and *Pontifex*, J.....**I. L. Rep. 1 Cal. 264, 1876.**

4. —— *Measure of Damages—Conversion of Timber—Cost of Conveyance to Market.*] In estimating the damages for the conversion of plaintiff's goods, the value of the goods at the place where the principal market for them exists, is the right basis of calculation ; but there must be deducted from the price at which they could have there been sold, the cost of conveying them thereto.

Morgan v. *Powell* (3 Q. B. 278) approved. BURMAH TRADING CORPORATION, LIMITED, *v.* MIRZA MAHOMED ALLY SHERAZEE...**L. Rep. 5 I. A. 130, 1878 ; I. L. Rep. 4 Cal. 116.** S.C under **Principal and Agent. 1.**

5. —— *For Arrest—Reasonable and Probable Cause—Act VIII. of* 1859, § 201.] A suit to recover damages on account of injuries caused by an arrest in accordance with an *ex-parte* decree of a competent Court can only be maintained under special circumstances—*viz.*, the plaintiff must show—*1st*, that the original civil action out of which the alleged injury arose has been decided in his favour ; *2ndly* that the arrest was procured maliciously and without reasonable and probable cause ; and *3rdly*, that the injury or damage sustained was something other than that which has or might have been compensated for by an award of costs of suit, *i.e.*, that the plaintiff has suffered some collateral wrong.

Possession of property by the judgment-debtor does not make it wrongful in the creditor to arrest his debtor in execution of a decree. Section 201 of Act VIII. of 1859 gives an option to the creditor of enforcing the decree either against the person or the property of the debtor, and the fact that the decree is an *ex-parte* decree makes no difference.

Where the plaintiff must show an absence of reasonable and probable cause, malice alone is not sufficient to entitle a plaintiff to a verdict. If a person has reasonable and probable cause for asserting a legal right he cannot be sued for setting the law in motion to enforce that right, however vindictive may be his feelings against his adversary. A Court is not warranted in inferring the absence of probable cause from the fact that enmities or malice existed between the parties. RAJ CHUNDER ROY *v.* SHAMA SUNDARI DEBI. *White* and *Tottenham*, JJ...**I. L. Rep. 4 Cal. 583.**

DAM-DUPAT—Rule of—not applicable to Decrees.

See **Hindu Law—Interest. 2.**

BALKRISHNA *v.* GOPAL...**I. L. Rep. 1 Bom. 73.**

—— Rule of—Applicable to Mortgagees.

See **Hindu Law—Interest. 3.**

RAMCHANDRA *v.* BHIMRAV...**I. L. Rep. 1 Bom. 577.**

See **Assignment of Mortgage.**

GANPAT PANDURANG *v.* ADARJI DADABHAI.....**I. L. Rep. 3 Bom. 312.**

—— Rule of—not applicable when Defendant not a Hindu.

See **Hindu Law—Interest. 1.**

NANCHAND *v.* BAPU SAHEB...**I. L. Rep. 3 Bom. 131.**

—— Rule of—not Applicable to Suits in Bengal Mofussil.

See **Interest. 4.**

DEEN DOYAL *v.* KYLAS CHUNDER. **I. L. Rep. 1 Cal. 92.**

DANCING GIRL—Dedication of.

See **Penal Code, § 372.**

REG. *v.* ARUNA CHELLAM...**I. L. Rep. 1 Mad. 164.**

—— Right of—to Exclusive Dedication of.

See **Immoral Custom.**

CHINNA UMMAYI *v.* TEGARAI CHETTI...**I. L. Rep. 1 Mad. 168.**

1. —— *Suit by—to establish* Mirasi *Right—Hereditary Office.*] The plaintiff sued to establish her right to the *mirasi* of dancing girls at a certain pagoda, and to be put in possession of the *mirasi*, with the honours and perquisites attached thereto ; and she alleged that the defendant, the Dharmakarta of the pagoda, wrongfully dismissed her from the office, because she refused to acquiesce in the admission by him of new dancing girls into the pagoda service, of which she claimed the monopoly for herself and the then existing families of dancing girls. The

Digitized by Google

DANCING GIRL—*contd.*

defendant denied that the plaintiff had any *mirasi* to the office of dancing girl, which office, however, he admitted that the plaintiff had held for 22 years, and claimed a right as dharmakarta to appoint and dismiss pagoda servants at will, and alleged that the admission by him of the new dancing girls complained of by the plaintiff in no way interfered with the plaintiff's rights, if any such existed. The District Judge dismissed the suit on the authority of *Chinna Ummayi* v. *Tegarai Chetti* (I. L. Rep. 1 Mad. 168) :—

Held, that the present case was distinguishable from *Chinna Ummayi* v. *Tegarai Chetti* (*ubi supra*), in that there was no allegation in that case of any endowment attached to the office. The question of the existence of such an hereditary office as that claimed in the present suit, with endowments or emoluments attached to it, ought to be inquired into, as that would materially affect the question whether the plaintiff had sustained injury by the defendant's interference. KAMALAM *v.* SADAGOPA SAMI. *Morgan*, C.J., and *Innes*, J...**I. L. Rep. 1 Mad. 356, 1878.**

DANGEROUS GOODS—Duty of Persons sending—to Carrier.

See **Negligence.**

LYELL *v.* GANGA DAI...**I. L. Rep. 1 All. 60.**

DARPATNI—*Refund of Bonus.*] The defendants, after purchasing a patni taluk at an auction sale for arrears of rent under Beng. Reg. VIII. of 1819, granted a darpatni lease to the plaintiff (the former darpatnidar), and received a bonus of Rs. 1,199. The lease contained a stipulation that if the patni tenure should at any time lapse through the default of the defendants, the bonus should be refunded by them to the plaintiffs. The auction sale to the defendants was subsequently set aside. The result was that the plaintiffs reverted to their former position of darpatnidars under the former patnidars, though they were not dispossessed :—

Held, that the plaintiffs were entitled to a refund of the bonus. The special stipulation for the refund in the particular contigency, which had not happened, of the patni tenure lapsing through the defendant's default, did not deprive them of this right.

Though patnis, darpatnis, and sepatnis may not be in strict analogy with leases in England,

DARPATNI—*contd.*

they contain in themselves sufficient of the nature of a lease to incline the Court to give the grantee or taker, in cases where it is otherwise equitable, that protection which a lessor in England is understood to guarantee his lessee for possession of the land. TARACHAND BISWAS *v.* RAM GOBIND CHOWDHRY. *Jackson* and *McDonnell*, JJ...**I. L. Rep. 4 Cal. 778 ; 4 Cal. Rep. 20, 1879.**

S. C. under **Landlord and Tenant. 7.**

DASIS—Dedication of.

See **Immoral Custom.**

CHINNA UMMAYI *v.* TEGARAI CHETTI...**I. L. Rep. 1 Mad. 168.**

See **Penal Code, § 372.**

REG. *v.* ARUNA CHELLAM ..**I. L. Rep. 1 Mad. 164.**

DASIPUTRA.

See **Hindu Law—Inheritance—Illegitimate Son. 4.**

RAHI *v.* GOVIND...**I. L. Rep. 1 Bom. 97.**

DASTURI—Acceptance of—by Public Servant.

See **Penal Code, § 165.**

EMPRESS *v.* KAMPTA PRASAD... **I. L. Rep. 1 All. 530.**

DATE OF PUBLICATION OF NOTICE OF SALE OF PATNI TENURE FOR ARREARS OF RENT.

See **Beng. Reg. VIII. of 1819, § 8, Cl. 2. 3.**

MATUNGEE *v.* MOORRARY...**I. L. Rep. 1 Cal. 175.**

DATTAKA MIMANSA.

See **Hindu Law—Authority of Writers. 1.**

GOPAL *v.* HANMANT...**I. L. Rep. 3 Bom. 273-276.**

DATTAKA CHANDRIKA AND DATTAKA MIMANSA.

See **Hindu Law—Authority of Writers. 5.**

MURARJI *v.* PARVATIBAI.....**I. L. Rep. 1 Bom. 177.**

Digitized by Google

DAUGHTER—Indigent Childless Widow—Right of—to inherit Father's Estate—Benares Law.

See **Hindu Law — Inheritance—Daughter. 3.**

SHRIMATI UMA DEVI *v.* GOKOOLANAND ..**L. Rep. 5 I. A. 40; I. L. Rep. 3 Cal. 587.**

—— Succession of—*inter se.*

See **Hindu Law — Inheritance — Daughter's Sons. 2.**

BAIJNATH *v.* MAHABIR.....**I. L. Rep. 1 All. 608.**

DAUGHTER'S ESTATE — Succeeding to Father—Absolute.

See **Hindu Law — Inheritance — Daughter. 1.**

HARIBAT *v.* DAMODARBHAT.....**I. L. Rep. 3 Bom. 171.**

DAUGHTER'S INHERITANCE FROM HER FATHER IS NOT STRIDHAN.

See **Hindu Law — Inheritance — Daughter. 4.**

CHOTAY LALL *v.* CHUNNOO LALL, **L. Rep. 6 I. A. 15; I. L. Rep. 4 Cal. 744.**

DAUGHTER'S SUCCESSION BY SURVIVORSHIP NOT DEFEATED BY BECOMING A CHILDLESS WIDOW.

See **Hindu Law — Inheritance — Daughter. 2.**

AMRITOLALL *v.* RAJONEEKANT... **L. Rep. 2 I. A. 113.**

DAUGHTER-IN LAW—Right of—to Maintenance from Father-in-Law.

See **Hindu Law—Maintenance of Widow. 8.**

GANGA BAI *v.* SITARAM.....**I. L. Rep. 1 All. 170.**

DAUGHTER'S SON—Adoption of—void among Brahmans, Kshatryas and Vaisyas—Lingayets are Sudras.

See **Hindu Law—Adoption. 6. 7.**

GOPAL *v.* HANMANT ...**I. L. Rep. 3 Bom. 273.**

BHAGIRTHIBAI *v.* RADHABAI... **Ibid. 298.**

DAUGHTER'S SON—*contd.*

—— Adoption of—Valid among Jains.

See **Jain Law. 2.**

SHEO SINGH RAI *v.* MUSSUMUT DAKHO...**L. Rep. 5 I. A. 87; I. L. Rep. 1 All. 688.**

—— Right of—to succeed to Maternal Grandfather's Estate—excluded by Daughter.

See **Hindu Law—Inheritance—Daughter's Son. 1. 2.**

AMRITOLALL *v.* RAJONEEKANT...**L. Rep. 2 I. A. 113.**

BAIJNATH *v.* MAHABIR.....**I. L. Rep. 1 All. 608.**

DEATH—Presumption of.

See **Evidence. 21.**

PARMESHAR *v.* BISHESHAR...**I. L. Rep. 1 All. 53.**

DEATH OF APPELLANT—Effect of.

See **Abatement of Appeal—Civil. 1.**

MORESHWAR *v.* KUSHABA ...**I. L. Rep. 2 Bom. 248.**

DEATH OF APPELLANT CONVICT—Effect of.

See **Abatement of Appeal — Criminal. 1.**

IMPX. *v.* DONGAJI... **I. L. Rep. 2 Bom. 564.**

DEATH OF DEFENDANT—Order on—Reviving Decree against a Person not the Legal Representative of Deceased—Appeal.

See **Stat. 24 and 25 Vict., Cl. 104. § 15. 7. 8.**

POGOSE *v.* CATCHICK...**I. L. Rep. 3 Cal. 708.**

P. N. POGOSE...**I. L. Rep. 3 Cal. 710, n.**

DEATH OF JUDGMENT-DEBTOR—Effect of—on Sale of Share of Deceased Judgment Debtor.

See **Hindu Law—Alienation of Ancestral Property. 4.**

SURAJ BUNSI KOER *v.* SHEO PERSHAD SINGH...**L. Rep. 6 I. A. 88.**

DEBENTURES.

See **Contract. 2.**

PORT CANNING LAND, &c., CO. *v.* SMITH.....**L. Rep. 1 I. A. 124; L. Rep. 5 P. C. 114.**

Digitized by Google

DEBT—ASSIGNEE OF—by Devise—Right of Representative of—to sue without Probate or Certificate under Act XXVII. of 1860.

See **Assignee of Debt.**

SHODONE *v.* HALALCORE...**I. L. Rep. 4 Cal. 645.**

DEBTS OF DECEASED MAHOMEDAN.

See **Mahomedan Law—Right of Creditor to follow Estate of Debtor into the hands of Purchasers from Heir.**

BAZAYET HOSSEIN *v.* DOOLI CHUND. **I. L. Rep. 4 Cal. 402.**

DEBTS INCURRED BY MANAGER OF JOINT FAMILY IN CARRYING ON THE JOINT ANCESTRAL TRADE.

See **Hindu Law—Maintenance of Widow. 9.**

JOHURRA BIBEE *v.* SREEGOPAL MISSER...**I. L. Rep. 1 Cal. 470.**

See **Hindu Law—Ancestral Trade.**

JOYKRISTO COWAR *v.* NITTYANUND NUNDY...**I. L. Rep. 3 Cal. 738.**

DECISION ON ONE OF SEVERAL ISSUES—Appeal from.

See **Letters Patent (1865), § 15 (Calcutta).**

EBRAHIM *v.* FACKRUNNISSA BEGUM...**I. L. Rep. 4 Cal. 531.**

DECLARATION OF RIGHT TO PROPERTY ATTACHED—Court Fees on Suit for.

See **Court Fees. 1.**

GULZARI MAL *v.* JADAUN RAI...**I. L. Rep. 2 All. 63.**

DECLARATION OF TITLE—Adverse Possession for 12 Years justifies, though Specific Title also alleged, but not proved.

See **Declaratory Decree. 6. 6a. 6b.**

SHIVO *v.* GOVIND...**I. L. Rep. 2 Cal. 418.**

GOLUCK CHUNDER *v.* NUNDO COMAR...**I. L. Rep. 4 Cal. 699.**

GOSSAIN *v.* ISSUR CHUNDER...**I. L. Rep. 3 Cal. 224.**

DECLARATION OF TITLE—*contd.*

—— Suit for—by Person in possession of Land.

See **Declaratory Decree. 13.**

PORAN SOOKH *v.* PARBUTTY...**I. L. Rep. 3 Cal. 612.**

DECLARATION OF ZEMINDARI RIGHTS TO CESSES AND COLLECTIONS—Suit for.

See **Declaratory Decree. 18.**

AKBAR KHAN *v.* SHEO RATAN... **I. L. Rep. 1 All. 373.**

DECLARATORY DECREE—Court Fees on Suit for.

See **Court Fees. 1. 10. 11.**

GULZARI *v.* JADAUN...**I. L. Rep. 2 All. 63.**

MANOHAR *v.* BAWA...**I. L. Rep. 2 Bom. 219.**

CHUNIA *v.* RAMDIAL...**I. L. Rep. 1 All. 360.**

—— Court Fees on Suit for—by Person against whom Order is passed under Act VIII. of 1859, § 246.

See **Court Fees. 11.**

CHUNIA *v.* RAMDIAL...**I. L. Rep. 1 All. 360.**

—— Of Defendant's Liability to account.

See **Court Fees. 10.**

MANOHAR *v.* BAWA RAMCHARANDAS...**I. L. Rep. 2 Bom. 219.**

—— Discretion of the Court.

See **Declaratory Decree. 9. 16.**

And *see* **Res Judicata. 4.**

TEKAIT DOORGA PERSHAD *v.* TEKAITNI DOORGA KONWALI. **L. Rep. 5 I. A. 149; I. L. Rep. 4 Cal. 190.**

—— Of Heirship to Hindu Widow.

See **Jurisdiction. 19.**

BAI MAKHOR *v.* BULAKHI...**I. L. Rep. 1 Bom. 538.**

And *see infra*, **7.**

—— Of Invalidity of Adoption.

See **Limitation. 97.**

KALOVA *v.* PADAPA...**I. L. Rep. 1 Bom. 248.**

Digitized by Google

DECLARATORY DECREE—*contd.*

—— Right to graze Cattle in Village Grazing Grounds.

See **Right of Free Pasturage.**

COLLECTOR OF THANA *v.* BAL PATIL...**I. L. Rep. 2 Bom. 110.**

—— Of Right to Office of Hereditary Kazi.

See **Kazi. 1.**

JAMAL *v.* JAMAL.....**I. L. Rep. 1 Bom. 633.**

—— Of Right to Officiate as Hereditary Officer.

See **Declaratory Decree. 17.**

CHINTO *v.* LAKSHMIBAI .....**I. L. Rep. 2 Bom. 375.**

—— Of Right to Officiate as Sole Representative of a Watandar Family.

See **Declaratory Decree. 18.**

KHANDO *v.* APAJI...**I. L. Rep. 2 Bom. 370.**

—— Of Right to Share in Patilki Vatan.

See **Declaratory Decree. 19. 20.**

—— Suit by Heir for Confirmation of Possession and Setting aside Deed—Proof of Heirship and Invalidity of Deed—Failure to prove Possession.

See **Setting aside Deed.**

TACOORDEEN TEWARRY *v.* NAWAB SYED ALI HOSSEIN KHAN... **L. Rep 1 I. A. 192.**

1.——*Act VIII. of* 1859, § 15—*Consequential Relief.*] A suit by a plaintiff, in receipt of the rents and profits, for possession of a share of certain mouzahs, under a *mál* title, "by setting aside the false *mogolee bromuttur* title stated by the defendants";—*Held*, not to be maintainable, it being in substance a suit for a declaration of title, and to set aside not any deed nor any act, but a mere allegation of the defendants that they had a certain tenure, and one in which, therefore, no relief could be granted. Section 15 of Act VIII. of 1859 gives a right of obtaining a declaration of title only in those cases where the Court could have granted relief if relief had been prayed for. RAJAH NILMONY SINGH *v.* KALLI CHURN BATTACHARJEE...**L. Rep. 2 I. A. 83; 14 Beng. L. R. 382; 23 W. R. 150, 1874.**

2.——*Act VIII. of* 1859, § 15—*Consequential Relief—Waste by Widow—Suit by Reversioner.*] In a suit by the respondent for a declaratory decree to the effect that he was entitled as next heir after the death of the first appellant to the *Shevagunga* zemindary, for immediate part possession and management thereof, for maintenance and other relief in respect of waste committed by several of the appellants, the Courts in India held, after the case with regard to relief had totally failed, that the respondent was entitled to a decree declaratory of his title as heir next. *Held*, by the Privy Council, that such decree must be reversed. The application of § 15 of Act VIII. of 1859, must be governed by the same principles as those upon which the Court of Chancery in England proceeds in reference to Stat. 15 and 16 Vict., Ch. 86, § 50, with such slight qualifications as may be required by the different circumstances of India, and the different constitutions of the Courts in that country.

A declaratory decree cannot be made unless there be a right to consequential relief capable of being had in the same Court, or, under special circumstances as to jurisdiction in some other Court.

The fact that the first appellant (a Hindu widow in possession of the zemindary), favouring the second appellant's title, had employed an agent, and executed a power of attorney to him, for the purpose of assisting the second appellant to possess himself of the zemindary, and withhold possession after death, *held* to be no ground for making a decree declaratory of the plaintiff's title.

The plaint having originally made a case of waste against the first appellant, and it being argued at their Lordships' bar, that it was necessary that the right of the respondent as nearest reversioner should be ascertained, to support such suit, and that if the suit had been tried out as it was framed at first, there would have been a case for consequential relief, their Lordships (after disposing of the argument by reference to the conduct of the respondent in the Lower Courts) say, p. 191:—"The arguments now under consideration are founded on the right of a reversioner to bring a suit to restrain a Hindu widow or other female in possession from acts of waste, although his interest during her life is future and contingent. Suits of that kind form a very special class, and have been entertained by the Courts *ex necessitate rei*. It seems, however, to their Lordships that if such a suit is brought it must be brought

Digitized by Google

by the reversioner with that object and for that purpose alone, and that the question to be discussed is solely between him and the widow; that he cannot by bringing such a suit, get, as between him and a third party, an adjudication of title which he could not get without it. Here if the plaintiff had brought his suit to restrain the widow from acts of waste, he might, no doubt, have had to prove, not merely the acts of waste alleged, but a title sufficient to give him a *locus standi* in Court. Their Lordships are not prepared to say that by showing that he was a grandson of the *istimrar* zemindar, although a doubtful question might arise thereafter between him and the second defendant as to which should succeed to the zemindary, he would not have established a sufficient *locus standi* against the widow, and the right to have her acts of waste restrained for the protection of the estate; but even if he had proved acts of waste against the widow, that would not have given him a right as against the second defendant to have the question which arises between them determined by a declarator. STRIMATHOO MOOTHOO VIJIA RAGOONATHAH RANEE KOLANDAPUREE NATCHIAR *v.* DORASINGA TEVER...**L. Rep. 2 I. A. 169, 1875; 15 Beng. L. Rep. 83; 23 W. R. 314.**

3.—— *Consequential Relief—Court Fees' Act VII. of* 1870, § 12—*Amendment of Plaint.*] The plaintiff sued on a stamp of Rs. 10 for a declaration of his title to land worth Rs. 19,000 in the possession of the defendant, and for the cancellation of certain proceedings by the demarcation officers whereby the land in dispute had been, as the plaintiff alleged, improperly demarcated, so as to include them in the lands of the defendant. The defendant, among other defences, denied that the lands had ever belonged to the plaintiff. The Lower Court dismissed the suit as improperly stamped, holding that it was not a suit for a declaratory decree only:—

Held, that if the plaintiff had merely complained of errors of demarcation, his prayer for a declaration of title to land alleged to have been erroneously omitted from his land by the demarcation officers would have been correct in form. But the plaintiff sued for a declaration of title to lands worth Rs. 19,000, which had been in the undisturbed possession of the defendant for several years, the object of the suit plainly being

to get possession of the land by way of declaration, and thereby deprive the defendant of the benefit of pleadings open to him in an ejectment suit, which was the proper form in which the plaintiff's claim should be brought forward.

The provision as to declaratory suits requires great care and circumspection in its application, and should not be entertained where the object is to defeat the stamp laws, or to throw difficulties in the adversary's way by preventing his raising questions which would be fairly open to him in an ejectment suit, but which are irrelevant allegations in a suit simply for a declaration of title. The suit, therefore, was rightly dismissed.

Held also, that though the law allows a plaintiff who has paid an insufficient stamp-duty in some cases to rectify his mistake, this privilege is subject to qualification. Where by mistake or miscalculation, a plaintiff undervalues his claim, he ought to have an opportunity of putting in the additional stamps. But there is not the same privilege where the relief to be granted is altogether distinct from that originally sought.

An application to allow the plaintiff to put an additional stamp on his plaint, and go on with the suit as an ejectment suit, was therefore refused. CHOKALINGAPESHNA NAICKER *v.* ACHIYAR. *Holloway* and *Kindersley*, JJ.....**I. L. Rep. 1 Mad. 40, 1875.**

4. ——*Consequential Relief.*] The defendant, the purchaser at an auction sale in execution of a decree against the deceased zemindar of *S.*, of the right, title and interest therein of the late zeminder, obtained delivery in the usual form under § 264 of Act VIII. of 1859, proclamation being made to the ryots that the rights of the late zemindar rested with the defendant. The defendant also issued, and sent into all the villages in the zemindary, notices and orders to all the karnams stating that he had purchased the whole zemindari, and was coming to distribute the pattas, and that all accounts should be submitted to him, and the rents be paid to his agent only. In consequence of these acts some few of the ryots refused to take their pattas, or withheld their rents from the plaintiff, the successor of the late zemindar. The plaintiff also applied to the Collector to be registered as zemindar. In a suit by the plaintiff, who was in possession of the zemindari for a declaration that the right, title and interest of the late

Digitized by Google

DECLARATORY DECREE—*contd.*

zemindar purchased by the defendant extended only to the rents and profits due from the zemin to the deceased zemindar at the date of his death, and that the defendant had no right to the zemin; and for an injunction to restrain the defendant from disturbing the plaintiff's enjoyment:—

Held, that the true construction of § 15 of Act VIII. of 1859, and the effect to be given to it must be considered as now settled by the decision of the Privy Council in *Kathama Nauchiar* v. *Dorasinga Tever* (L. Rep. 2 I. A. 169; 15 Beng. L. Rep. 83). It was there determined that a declaratory decree cannot be made unless there be a right to consequential relief capable of being had in the same Court, or, in certain cases, in some other Court. If, therefore, the case stated is one in which no relief could be given, if asked for, the Court should make no decree declaring rights; nor should any decree be made unless the relief capable of being given is consequential relief. The mere fact that some infringement of the proprietary right or title may have taken place, which, under certain conditions, might confer a right of suit for damages is not sufficient to support a suit of this description. The decree, therefore, of the lower Court granting the plaintiff a declaration, was reversed, on the ground that it was a declaratory decree given in a case in which no consequential relief could have been granted if asked for. The plaintiff proved no actual injury, and no apprehension of such injury as to justify a prayer for relief. SINI THIRUVENGADATHIENGAR *v.* SANGILIVEERAPPA P. CHINNATHAMBIAR. *Morgan*, C.J., and *Holloway*, J.....**I. L. Rep. 1 Mad. 65, 1876.**

5. —— *Consequential Relief—Act VIII. of 1859, § 15.*] *A.* granted a lease of his entire property to the plaintiff for a term of years, with power to enhance the rents and make settlements. Immediately after, *A.* executed a pottah to *B.*, covering a portion of the same estate, whereby *B.*'s rent was to remain unchanged for a period conterminous with the plaintiff's lease. In a suit by the plaintiff against *B.* and *A.*'s representative to set aside the pottah, it was objected that the plaintiff had no cause of action, inasmuch as the pottah had not yet been set up against him, nor was any injury shown to have been occasioned to him thereby:—

Held, that the suit was maintainable. In laying down the rule in *Strimathoo Mothoo Vijia Ragoonadah* v. *Dorasinga Tever* (15 Beng. L. Rep. 106), that "a declaratory decree cannot be made unless there be a right to consequential relief capable of being had either in the same Court, or, in certain cases, in some other Court," the Privy Council did not intend to deny to the Courts in India the power to grant decrees in any case, in which, independently of the provisions contained in § 15 of Act VIII. of 1859, those Courts have power to grant a decree. In the High Courts that power is generally the same as that of the Court of Chancery in England. That was the power of the Supreme Courts, and was extended to the High Court. There is no valid ground for holding that the Courts in the Mofussil have a jurisdiction in this respect different from or less than that of the High Courts. At any rate, in the absence of all special provision or authority on the subject, it would be difficult to suggest any other guide than the practice of the Court of Chancery in England, according to which such a suit as this was maintainable. RAM NEEDHEE KOONDOO *v.* RAJAH RUGHOO NATH NARAIN MULLO. *Markby* and *McDonnell*, JJ...**I. L. Rep. 1 Cal. 456, 1876.**

See **Limitation. 58.**

FAKHAROODEEN M. HOSSAIN *v.* POGOSE...**I. L. Rep. 4 Cal. 209.**

6. —— *Declaration of Title—Adverse Possession.*] A declaration of title may be made on proof of adverse possession for twelve years, although the title has not been based on that ground in the plaint, provided that the plaintiff has drawn the attention of the defendant to the fact that he is going to claim a declaration of title on such adverse possession, and that the question of such adverse possession has been clearly raised in the issues.

Tirumalasami Reddi v. *Ramasami Reddi* (6 Mad. H. C. Rep. 420) dissented from. *Ram Lochun Chuckerbutty* v. *Ram Soondur Chuckerbutty*, 20 W. Rep. 104) followed. SHIRO KUMARI DEBI *v.* GOVIND SHAW TANTI. *Markby* and *Prinsep*, JJ.....**I. L. Rep. 2 Cal. 418, 1877.**

6a. —— *Specific Title—Adverse Possession.*] A distinction exists between cases where the plaintiff sues for a decree, declaring himself to be the owner of property on the strength of some particular title, and cases where he claims generally the possession of land under some alleged title, but coupled with a possession ex-

Digitized by Google

DECLARATORY DECREE—*contd.*

tending over twelve years or upwards. In the first class of cases he is not entitled to a decree declaring him to be the owner by virtue of the particular title, unless he proves that title.

But in the latter class of cases, whether he proves the origin of his title or no, if he can show a twelve years' continuous adverse possession as against the defendant, that is sufficient by the law in India to give him a title of itself.

Gossain Dass Chunder v. *Issur Chunder Nath* (I. L. Rep. 3 Cal. 225) followed. GOLUCK CHUNDER MASANTA *v.* NUNDO COOMAR RAI. *Garth*, C.J., and *McDonnell*, J...**I. L. Rep. 4 Cal. 699, 1878.**

6b.—— *Title—Limitation.*] Twelve years' continuous possession by a wrong-doer not only bars the remedy and extinguishes the title of the rightful owner, but confers a good title upon the wrong-doer. Where a plaintiff seeks to recover possession of property of which he has been dispossessed, and bases his claim on the ground of purchase, and also on the ground of a twelve years' possessory title, he is entitled to succeed if he proves his possession, even if he fails to prove his purchase.

Although it may be doubted whether the law as laid down by the Privy Council in *Gunga Gobind Mundul* v. *Collector of the 24-Purgunnahs* (11 Moo. I. A. 345) was meant to have the extended operation of enabling the title of the wrong-doer to be transferred to a third person, whilst it is in the course of acquisition, and before it has been perfected by a twelve years' possession, yet such a construction of it tends to convenience in this country, and the High Court was not disposed to question its correctness as applied to the present case. GOSSAIN DASS CHUNDER *v.* ISSUR CHUNDER NATH. *Garth*, C.J., and *Birch*, J ..... **I. L. Rep. 3 Cal. 224, 1877.**

7. —— *Suit by Reversioner.*] The plaintiff's mother was entitled to certain property for her life under an award under which the plaintiff was entitled to succeed to the property after her mother's death. The plaintiff sued her mother and the holder of a decree, in execution of which the property had been sold, praying for a declaration of her right to succeed to the property, and that the said decree might be declared void against her; alleging that the decree had been obtained and executed by collusion between the defendants :—

Held, that the suit was maintainable, under the ruling in *Kattama Natchiar* v. *Dorasinga Tevar* (15 Beng. L. Rep. 83; L. Rep. 2 I. A. 169) which expressly excepted the case of a suit brought by a Hindu reversioner from the operation of the general rule that a declaratory decree should not be granted where no right to consequential relief is involved. MUSAMAT JAGESRI KUAR *v.* RAM NATH BHAGAT. *Stuart*, C. J., and *Turner*, J...**I. L. Rep. 1 All. 371, 1877.**

8. ——*Beng. Reg. VIII. of* 1822, § 9, *Cl.* 1—*Act XIX. of* 1873, § 66—*Declaration of Zemindar's Right to Cesses and Collections—Jurisdiction.*] A Civil Court is not precluded by the terms of Beng. Reg. VIII. of 1822, § 9, Cl. 1, from inquiring into and declaring a right on the part of the zemindar to cesses and collections, although not avowed and sanctioned, not taken into account in fixing the Government Jama at the time of settlement, notwithstanding that till so avowed and sanctioned they cannot be collected by the zemindar, and there is nothing in § 66 of Act XIX. of 1873 to a contrary effect. AKBAR KHAN *v.* SHEORATAN. *Stuart*, C.J., and *Oldfield*, J.....**I. L. Rep. 1 All. 373, 1877.**

9.—— *Discretion — Remand.*] Since a declaratory decree is a matter of discretion, a claim for a declaration ought not to be remanded by an Appellate Court for further inquiry, which is likely to entail expense and delay, where the plaintiff's claim is contingent on his surviving the defendant, and where the declaration will not be binding on parties with possibly preferential titles who have not been joined in the suit. DOORGA PERSAD SINGH *v.* DOORGA KONWARI... **I. L. Rep. 4 Cal. 190, 1878; L. Rep. 5 I. A. 149.**

S. C. under **Res Judicata. 4.**

10. —— *Suit for—Málabár Law*—Karnavan *Lands acquired by Member of Málabár* Tárwád.] In a suit brought to obtain a declaration that the land mentioned in the plaint formed the common property of the *tárwád*, of which the plaintiff was the present *karnavan*, and to have the revenue registry of those lands transferred to his name, the plaint alleged that the lands in question were the private acquisitions of three of the deceased members of the *tárwád*, of whom

Digitized by Google

DECLARATORY DECREE—*contd.*

the last, in whose name the land was last assessed, on becoming *karnavan*, applied to the Sub-Collector to have the registry of those lands transferred to the names of his own nephews, the first and the second defendants; that the plaintiff protested against the proposed transfer, and was referred by the Sub-Collector to a Civil Court to obtain a declaration that the registry could not be so transferred. The Revenue authority was not made a party to the suit.

Held, that the plaintiff was entitled to have the declaration prayed for, as it would enable him to go to the Collector for substantial relief in the shape of registration in his name; but the relief sought, in the shape of the transfer of registry to his name, could not be granted, the Revenue authority not being a party to the suit. CHANDU *v.* CHATHU NAMBIAR. *Morgan*, C.J., and *Innes*, J.....**I. L. Rep. 1 Mad. 381, 1878.**

11. —— *Act VIII. of* 1859, § 15—*Consequential Relief.*] "Their Lordships desire to adhere to the opinion declared in several decisions of this Board, that § 15 of Act VIII. of 1859, relating to declaratory decrees, ought to receive the same construction as § 50 of the English Act, 15 and 16 Vict., C. 86, which is similarly worded, has received from the English Courts. A declaratory decree ought not to be made unless there is a right to some consequential relief which, if asked for, might have been given by the Court, or unless in certain cases a declaration of right is required as a step to relief in some other Court.

"The question whether a right to some consequential relief exists must therefore arise in all suits in which a declaration of title is sought. A right to come to the Court to have a document or act which obstructs the title or enjoyment of property cancelled or set aside, or for an injunction against such obstructions, would be sufficient to sustain a declaratory decree."

Upon the death of the grantee for life of a zemindari, his widow, the respondent, purchased the same from Government. The Settlement Officer (in excess of his powers) while making up the Wajib-ul-urz, called on the respondent to name her successor in order to enter his name in the paper. The respondent requested that the name of her adopted son might be so entered, but on the appellant's objecting to this being done, on the ground of the invalidity of the adoption by the widow, the Settlement

DECLARATORY DECREE—*contd.*

Officer referred the parties to the Civil Court for the determination of the validity of such adoption.

The respondent thereupon filed a suit, to which the adopted son was afterwards joined as co-plaintiff, claiming to be maintained in possession "by establishment of plaintiff's exclusive right of inheritance to the estate of her deceased husband, and to uphold the adoption of her daughter's son, as well as his right permanently to succeed after her death, by voiding the defendant's pretensions under the customs and usages of the Sarogi religion." The appellant by his written statement denied the validity of the adoption, and set up a nuncupative will in his favour by the respondent's husband. It being contended on behalf of the respondents that the intervention of the appellant in the proceedings of the Settlement Officer, and his objection to the entry of the name of the first respondent's adopted son, on the Wajib-ul-urz, on the ground that the adoption was invalid, was an act of obstruction against which she was entitled to relief; their Lordships said, "If it had been shown that the entry thus objected to had been necessary to the settlement of the mouzah, or the completion of the title, or the right to present possession, the contention might have been well founded. But this has not been shown. It would seem that the mouzah had been already granted by the Government to the first respondent, and she had been already recorded as proprietor. The object of the paper (the Wajib-ul-urz) appears to be to record peculiar customs for the information of the Settlement Officers; and although the Deputy Collector asked for information as to the first respondent's successor, and, upon the appellant's objection to the entry of the adoption, placed his objection on the Wajib-ul-urz, and referred the parties to a Civil Court, their Lordships would have felt great difficulty, to say the least, if it had been necessary to give a decision on this point, in coming to the conclusion that these proceedings were such an obstruction to the title or right of possession as would sustain the decree. As to the other ground on which it was alleged that the plaintiffs (respondents) were entitled to relief, *viz.*, that the appellant had put forward a nuncupative will of his deceased brother by which he was made the proprietor of the estate, and that the plaintiffs (respondents) were entitled, if they had asked for it, to a

Digitized by Google

DECLARATORY DECREE—*contd.*

decree annulling the will; their Lordships said, "It would probably not be disputed that if a fictitious will in writing be set up, upon a proper case being made, the plaintiffs might claim to have the document cancelled, and their Lordships are not prepared to say that, in cases where property may legally pass by an oral will an analagous right to have it declared null may not exist. A claim under such a will is not a bare assertion of title, but the setting up of a specific act by which title to property may be conferred. The reasons, too, for giving such relief in the case of written wills would seem to apply to nuncupative wills, and one of them, the probable death of witnesses, with even greater force to the latter than the former. SHEO SINGH RAI *v.* MUSSUMUT DAKHO...**L. Rep. 5 I. A. 87, 1878; I. L. Rep. 1 All. 688; 2 Cal. Rep. 193.**

S. C. under **Jain Law. 2.**

Practice—Privy Council. 9.

12.——*Cancellation of Document—Void Document—Apprehension of Injury.*] In a suit for a declaration that a certain document, purporting to be an acknowledgment by the obligee of a bond of the receipt of money from the obligor in part payment thereof, was not a genuine document, the plaintiff alleged that the document had been fabricated with the object of reviving the right of suit on the bond, which, being dated the 6th of November 1856, was barred by limitation:—

Held, that the receipt could not be used for the purpose apprehended by the plaintiff. To support a plea that a new period of limitation had accrued from part payment of principal, the fact of payment must appear in the handwriting of the person making the same on the instrument on which the debt arose, or in his own or the creditor's books. The plaintiff, therefore, could not be held to have reasonable ground to apprehend injury from the document, and his suit was not maintainable. SHIB LAL *v.* HIRA LAL. *Pearson* and *Turner*, JJ...**I. L. Rep. 1 All. 622, 1878.**

13.——*Suit by Person in Possession of Land to establish Title—Act VIII. of* 1859, § 15—*Practice—Grounds of Appeal taken in the Argument—Specific Relief Act I. of* 1877.] The defendant sued the plaintiff in the Munsiff's Court for rent on certain lands in the plaintiff's occupation, and the amount sued for being less than Rs. 50, the

DECLARATORY DECREE—*contd.*

Munsiff tried the suit in his jurisdiction as Small Cause Court Judge, and gave judgment for the present defendant, the then plaintiff. The present plaintiff then brought the present suit, alleging that she was entitled to the lands in question under the will of her husband, who had purchased them as *lakheraj* or rent-free lands, and that as there was no appeal against the Munsiff's decision, her *lakheraj* right in respect of the said lands had been injured, and she therefore prayed for the establishment of her *lakheraj* right to the lands:—

Held, that the suit was not maintainable. It is settled law that a suit cannot be maintained where the plaintiff who merely seeks for a declaration of title is in possession, and the claim which the defendants had set up was no longer in the condition of a mere assertion or a claim for right; it had passed into a decree. The plaintiff, therefore, could not bring this suit for the purpose of setting aside the judgment of the Small Cause Court, and therefore no relief could be had in respect of that.

Held also, that the fact that the plaintiff, unless the present suit were allowed to be maintained, would be without remedy, was not a reason for allowing a suit to be maintained which the law did not allow.

But the plaintiff was not without a remedy, for if a further suit for rent were brought, she could immediately file a suit in the Munsiff's Court, and apply for an injunction to prevent the other party from proceeding so long as her own suit was not disposed of and an absolute relief given to her.

Held, further, that though as a general rule the High Court will not allow grounds of appeal to be taken in argument which have not been taken in the memorandum of appeal; yet where a decree comes before it which is upon its very face illegal—a decree which goes beyond the power of the Court which passed it—the High Court will take up the point itself and rectify the mistake.

Semble—Per Jackson, J.—That the plaintiff might, if a fresh suit for rent were brought against her, again raise the same question, because the Small Cause Court had no power to determine finally a question of right. PORAN SOOKH CHUNDER *v.* PARBUTTY DOSSEE...**I. L. Rep. 3 Cal. 612, 1878.**

Digitized by Google

DECLARATORY DECREE—*contd.*

14.——*Suit for Declaration of Right only.*] In a suit merely for a declaration of right to certain property, the lower Appellate Court, on an objection as to the insufficiency of the stamp on the plaint, allowed the plaintiff to make up the full amount of fees required for a suit for possession of the property, which the Judge considered to be the real object of the suit. The plaint was not amended, and the lower Appellate Court eventually gave a decree only for a declaration of right:—

Held, on second appeal by the defendant, who objected that a suit merely for a declaration of right could not be maintained, that such objection could not under the circumstances be allowed. SARASUTI *v.* MANNU. *Pearson* and *Oldfield*, JJ ..... **I. L. Rep. 2 All. 134, 1879.**

S. C. under **Hindu Law—Inheritance—Illegitimate Son. 3.**

15.——*Specific Relief Act I. of* 1877, § 42.] The defendant was in possession of the estate of a deceased *Gosavi* as his *Shishya* (spiritual son). The plaintiff sued on a stamp of Rs. 10 for a declaration that he was the true *Shishya* of the said *Gosavi* by a previous adoption, his real object being to establish a title to the estate in the hands of the defendant:—*Held*, that under any circumstances the Court would not exercise in the plaintiff's favour the discretionary power vested in it by § 42 of Act I. of 1877, inasmuch as to do so would enable the plaintiff to obtain relief on a stamp of Rs. 10, which the Legislature intended should be chargeable with a higher fee, and thus would have the effect of giving countenance to an evasion of the stamp law. GANPATGIR GURU BHOLAGIR *v.* GANPATGIR. *West* and *Pinhey*, JJ..... **I. L. Rep. 3 Bom. 230, 1879.**

16.——*Consequental Relief—Discretion of Courts—Act VIII. of* 1859, § 15.] "It is true that the law (Act VIII. of 1859, § 15) allows the Courts, without granting consequential relief, to make binding declarations of title; but it has been held both here and in England (§ 15 being almost a transcript of Stat. 15 and 16 Vict., Cl. 86, § 50) that it is discretionary with Courts whether they will give a declaratory decree or not; and it has also been held that a declaratory decree will not be made unless the plaintiff would be entitled to consequential relief if he asked for it, *e.g.*, where an abstract decision on the point is asked, the plaintiff being either in

DECLARATORY DECREE—*contd.*

full possession, or out of possession beyond the statutable period for the institution of suits." BAI MAKHOR *a.* BULAKHI CHAKU. *Per Kemball*, J ..... **I. L. Rep. 1 Bom. 338, 542.**

S. C. under **Jurisdiction. 19.**

17.——*Suit for a Declaration of Right to Officiate as an Hereditary Officer—Bombay Act III. of* 1874—*Jurisdiction.*] Since Bombay Act III. of 1874 came into force, no suit will lie in a Civil Court for a declaration that a person is eligible to officiate as an hereditary officer falling within the scope of that Act.

Since that Act became law, none but representative *Watandars* or their deputies, or substitutes, as provided for in the Act, can officiate, and the duty of determining what persons shall be recognized as representative *Watandars* is vested in the Collector, whose proceedings are judicial proceedings, and from whom an appeal lies to the Revenue Commissioner. CHINTO ABAJI KULKARNI *v.* LAKSHMIBAI. *Westropp*, C.J., and *Melvill*, J...**I. L. Rep. 2 Bom. 375, 1877.**

18.——*Suit for a Declaration of Right to Officiate as sole Representative of a Watandar Family—Bombay Act III. of* 1874—*Jurisdiction.*] Since the coming into force of Bombay Act III. of 1874, it is not competent for the Civil Courts to entertain a suit for a declaration of right to officiate as sole representative of a *Watandar* family, because not only can they not afford a consequential remedy, but because they can no longer establish a right which the Collector would be bound to respect, he having been made by that Act a Judge for the particular purposes of the Act, and the relations of all the *Watandars inter se* being placed entirely at the disposal of the Collector, whose jurisdiction cannot be interfered with so long as it is exercised in the way provided by the Act. KHANDO NARRAYAN KULKARNI *v.* APPAJI SADASHIV KULKARNI. *West* and *Pinhey*, JJ.....**I. L. Rep. 2 Bom. 370, 1877.**

19.——*Suit for a Declaration of Right to share in Patilki Watan and Officiate in Rotation—Eligibility—Adverse Possession.*] An admitted ownership of a share in the lands appurtenant to a *Patilki Watan* raises a *prima facie* presumption of eligibility for the office of *Patil*; and the exercise by the Collector of his right, under Act XI. of 1843, to appoint one of several coparceners to officiate as *Patil*, is not a denial of the

Digitized by Google

DECLARATORY DECREE—*contd.*

eligibility of the others, and does not, therefore, give to the one so appointed a possession adverse to the other coparceners. NINDAN GAVDA *v.* MALAN GAVDA, *Westropp*, C.J., and *Kemball*, J... **I. L. Rep. 1 Bom. 533, n., 1872.**

20. —— Though a suit will not lie for a declaration of the right of an admitted sharer in a *Patilki Watan* to a preference over his co-sharer in the enjoyment of the office of *Patil*, yet a suit will lie for a declaration of the plaintiff's right to share in the *Watan*, and of his eligibility to officiate as *Patil*, when that right is denied by the other sharers. BABAJI *v.* NANA. *Westropp*, C.J., and *West*, J.....**I. L. Rep. 1 Bom. 535, n., 1876.**

"DECREE."

See **Civil Procedure Code, Act X. of 1877, § 2.**

DALPATBHAI *v.* AMARSANG...**I. L. Rep. 2 Bom. 553.**

—— Order Passed in Execution—Appeal.

See **Appeal—Civil. 23. 26. 28.**

MURLI DHAR *v.* PURSHOTAM...**I. L. Rep. 2 Bom. 91.**

THAKUR PRASAD *v.* AHSAN ALI... **I. L. Rep. 1 All. 668.**

UDA BEGUM *v.* IMAM-UD-DIN...**I. L. Rep. 2 All. 74.**

—— Order of Reference to take Accounts.

See **Civil Procedure Code, Act X. of 1877, § 3.**

RUSTOMJI BURJORJI *v.* KESSOWJI NAIK.....**I. L. Rep. 3 Bom. 161.**

—— Order Rejecting Petition for Leave to Sue *in formâ Pauperis.*

See **Appeal—Civil. 18.**

COLLIS *v.* MANOHAR DAS...**I. L. Rep. 1 All. 745.**

—— Order Refusing to Set Aside *Ex-parte* Decree.

See **Appeal—Civil. 2. 19.**

GULAB SINGH *v.* LACHMAN DAS... **I. L. Rep. 1 All. 748.**

LAKMIDAS *v.* EBRAHIM. **I. L. Rep. 2 Bom. 644.**

"DECREE"—*contd.*

—— Order Returning Plaint after Issues framed is not a—under Act XII. of 1879, § 2.

See **Appeal—Civil. 22.**

ABDUL SAMAD *v.* RAJINDRO KISHOR SINGH...**I. L. Rep. 2 All. 357.**

DECREE—Acknowledgment of Barred.

See **Kistbandi.**

HEERA LAL *v.* DHUNPUT...**I. L. Rep. 4 Cal. 500.**

See **Limitation. 43. 44.**

KALLY PROSONNO *v.* HEERA LAL... **I. L. Rep. 2 Cal. 468.**

MUNGAL PRASHAD *v.* SHAMA KANTO...**I. L. Rep. 4 Cal. 708.**

—— Administration Suit—Effect of.

See **Certificate to collect Debts. 2.**

TREEPOORASOONDERY *v.* DEBENDRONATH...**I. L. Rep. 2 Cal. 45.**

—— Agreement not to Execute.

See **Estoppel. 6.**

PARAM SINGH *v.* LALJI MAL...**I. L. Rep. 1 All. 403.**

—— Assignment of—Cross Decrees—Execution.

See **Execution of Decree. 3.**

MURLI DHAR *v.* PURSHOTUM DASS. **I. L. Rep. 2 All. 91.**

—— Attachment and Sale of Money—in Execution.

See **Civil Procedure Code, Act X. of 1877, § 273.**

SULTAN KUAR *v.* GULZARI LAL... **I. L. Rep. 2 All. 290.**

—— Charging Lands is an Interest in Immoveable Property.

See **Sale in Execution of Decree. 7.**

MUSAMAT BHAWANI KUAR *v.* GULAB RAI.....**I. L. Rep. 1 All. 348.**

—— Conditional—in Pre-emption Suit.

See **Pre-emption. 3. 4. 8.**

SHAIKH EWAZ *v.* MOKUNA BIBI... **I. L. Rep. 1 All. 132.**

HINGAN KHAN *v.* GANGA PARSHAD.....**I. L. Rep. 1 All. 293.**

MAHABIR PARSHAD *v.* DEBI DIAL... **Ibid. 291.**

Digitized by Google

DECREE—*contd.*

—— Conditional—in Redemption Suit.

See **Mortgage. 35. 36.**

RAJA BARDA KANT *v.* BHAGWAN... **I. L. Rep. 1 All. 344.**

SAHIB ZADAH *v.* PARMESHAR DAS. **I. L. Rep. 1 All. 524.**

—— Construction of.

See **Construction of Decree.**

SUMAR AHMED *v.* HAJI ISMAIL... **I. L. Rep. 1 Bom. 158.**

—— Cross-Decrees—Execution.

See **Execution of Decree. 3.**

MURLI DHAR *v.* PURSOTAM DAS... **I. L. Rep. 2 All. 91.**

—— Erroneous Construction of—by Court pronouncing it.

See **Account. 1.**

HIRJI JIVA *v.* NARAN MULJI...**I. L. Rep. 1 Bom. 1.**

—— Execution of.

See **Execution of Decree.**

—— Final.

See **Pre-emption. 38.**

SHAIKH EWAZ *v.* MOKUNA BIBI... **I. L. Rep. 1 All. 132.**

HINGAN KHAN *v.* GANGA PARSHAD. .....**Ibid. 293.**

—— Final—of Appellate Court.

See **Limitation. 69. 76.**

UMIASHANKAR *v.* CHOTALAL.....**I. L. Rep. 1 Bom. 19.**

IMAM ALI *v.* DASSAUNDHI RAM... **I. L. Rep. 1 All. 508.**

—— Form of—against Mortgaged Property.

See **Hindu Law—Undivided Family. 7.**

LUCHMI DAI *v.* ASMAN SING... **I. L. Rep. 2 Cal. 213.**

—— against a Hindu Widow—Personal.

See **Personal Decree against a Hindu Widow.**

BAIJUN DOOBEY *v.* BRIJ BHOOKUN. **L. Rep. 2 I. A. 275.**

DECREE—*contd.*

—— against Hindu Widow—Reversioners when bound by.

See **Res Judicata. 17.**

BROMMOYE DASSE *v.* KRISTO MOHUN.....**I. L. Rep. 2 Cal. 222.**

—— Interest on.

See **Interest. 11.**

SETH GOKULDAS GOPALDAS *v.* MURLI...**L. Rep. 5 I. A. 78.**

—— Interest—Rule of *Dam-Dupat* inapplicable.

See **Hindu Law—Interest. 2.**

BALKRISHNA *v.* GOPAL...**I. L. Rep. 1 Bom. 73.**

—— For Maintenance—Suit on.

See **Multiplicity of Suits. 1. 2.**

LAKSHMAN *v.* SATYABHAMABAI...**I. L. Rep. 2 Bom. 494.**

SIDLINGAPA *v.* SIDAVA...**I. L. Rep. 2 Bom. 624. 630.**

—— For Maintenance—Varying Decree.

See **Multiplicity of Suits. 2.**

SIDLINGAPA *v.* SIDAVA...**I. L. Rep. 2 Bom. 624.**

—— For Mesne Profits—Execution of—Interest.

See **Execution of Decree. 20.**

HURRODURGA *v.* SHARRAT SOONDERY.....**I. L. Rep. 4 Cal. 674.**

—— Money Decree—Attachment and Sale of.

See **Civil Procedure Code, Act X. of 1877, § 273.**

SULTAN KUAR *v.* GULZARI LAL... **I. L. Rep. 2 All. 290.**

—— Money Decree obtained on Mortgage—Sale—Right of Purchase.

See **Sale in Execution of Decree. 4. 9.**

KHUB CHUND *v.* KALIAN DAS...**I. L. Rep. 1 All. 240.**

BALWANT SINGH *v.* GOKARAN PRASAD.....**Ibid. 433.**

See **Mortgage. 40.**

GANPUT RAI *v.* SARUPI...**I. L. Rep. 1 All. 446.**

Digitized by Google

DECREE—*contd.*

—— Money Decree unconnected with his Mortgage, obtained by Mortgagee—Execution Sale—Right of Purchaser.

See **Mortgage. 3.**

TUKARAM *v.* RAMCHUNDRA...**I. L. Rep. 1 Bom. 314.**

See **Sheriff's Sale. 3.**

BHUGGOBUTTY *v.* SHAMACHURN... **I. L. Rep. 1 Cal. 337.**

—— Payable by Instalments—Discretion to make.

See **Decree payable by Instalments.**

—— Payable by Instalments—Limitation for Execution of.

See **Limitation. 71. 71a. 72.**

DULSOOK *v.* CHUGON...**I. L. Rep. 2 Bom. 356.**

KANCHAN SINGH *v.* SHEO PRASAD. **I. L. Rep. 2 All. 291.**

SHIB DAT *v.* KALKA...**I. L. Rep. 2 All. 443.**

—— Payable by Instalments—Suit on—Limitation.

See **Limitation. 62.**

SAKHARAM *v.* GANESH.....**I. L. Rep. 3 Bom. 193.**

—— Payable by Instalments in Suit on Bond charging Immoveable Property.

See **Civil Procedure Code, Act X. of 1877, § 210.**

HURDEO DAS *v.* HUKAM SINGH... **I. L. Rep. 2 All. 320.**

—— For Performance of Specific Act—Execution of.

See **Civil Procedure Code, Act VIII. of 1859, § 200.**

AJNASI KUAR *v.* SURAJ PRASAD... **I. L. Rep. 1 All. 501.**

—— Purchase of—by Joint Judgment-Debtor.

See **Limitation. 51.**

ABDUL MUNSOOR *v.* ABDOOL HAMID...**I. L. Rep. 2 Cal. 98.**

—— Reversal of—after Sale in Execution, but before Confirmation.

See **Sale in Execution of Decree. 21.**

BASAPPA *v.* DUNDAYA.....**I. L. Rep. 2 Bom. 540.**

DECREE—*contd.*

—— Sale in Execution of.

See **Sale in Execution of Decree.**

—— Against a Sirdar—Execution of—against his Heir not being a Sirdar.

See **Limitation. 62.**

SAKHARAM *v.* GANESH.....**I. L. Rep. 3 Bom. 193.**

—— Against Sirdar's Heir—Execution of.

See **Execution of Decree. 5.**

GOVIND *v.* SAKHARAM.....**I. L. Rep. 3 Bom. 42.**

—— Of Small Cause Courts (Presidency Towns).

See **Execution of Decree. 24.**

In re JAGJIVAN NANABHAI...**I. L. Rep. 1 Bom. 82.**

—— Of Small Cause Courts (Mofussil)—Execution of.

See **Execution of Decree. 21. 22. 23.**

—— Of Small Cause Court, Suit on.

See **Suit on Decree. 2.**

KHOBLAL *v.* RAMCHUNDER...**I. L. Rep. 2 Cal. 434.**

—— Subsequently reversed—Refund of Costs paid under.

See **Refund of Costs paid under Decree subsequently reversed.**

DORAB ALLY KHAN *v.* ABDOOL AZEEZ.....**I. L. Rep. 4 Cal. 229.**

—— Suit on.

See **Multiplicity of Suits.**

SIDLINGAPA *v.* SIDAVA .....**I. L. Rep. 2 Bom. 624, 630.**

—— Suit upon a.

See **The Cases under Suit on a Decree.**

—— Time-barred—Revival of.

See **Limitation. 43. 44.**

KALLY PROSONO HEERA LAL...**I. L. Rep. 2 Cal. 468.**

MUNGOL PRASHAD *v.* SHAMA KANTO...**I. L. Rep. 4 Cal. 708.**

See **Kistbandi.**

HEERA LALL *v.* DHUNPUT...**Ibid. 500.**

Digitized by Google

DECREE—*contd.*

1.——*Boundaries—Specific Statement of Relief granted by Decrees.*] *A.* claimed certain lands, claiming one portion of such lands under one title, and the remainder under another and separate title. In the schedule to his plaint he gave the boundaries of the entire lands claimed by him, but did not give any boundary between the lands claimed by him under one title and the lands claimed by him under the other title. The Lower Court decreed the whole of the plaintiff's claim. The Lower Appellate Court confirmed so much of the decree of the Court of first instance as declared the plaintiff's right to the first portion, and dismissed his suit as to the remainder; and there being no evidence to show what lands in particular out of the whole claim were comprised in the first portion for which it gave him a decree, directed them to be ascertained in execution.

Held, that the decree was bad, as it should have specified the lands decreed. KUNGAL CHANDAR RUJ *v.* KANYE LALL RUJ. *Jackson* and *Tottenham*, JJ.....**I. L. Rep. 4 Cal. 69, 1878.**

2.—— *Construction of—What it must contain—Civil Procedure Code, Act X. of* 1877, § 206.] The plaintiff sued on a bond by which real property was hypothecated. In his claim the property hypothecated was detailed, and the property itself was impleaded as a defendant; but the decree was in the following terms:—"Decree for plaintiff in favour of his claim and costs against the defendant":—

Held, that § 206 of Act X. of 1877 lays down in the most explicit way what the contents of a decree are to be; and if there be an omission in the decree so that the relief given by it does not in terms go to the extent asked, it is no part of the duty of the High Court, or any other Court, to import words for the purpose of stretching its operation. The Court making the decree must be presumed to have expressed the relief it was prepared to give, and the words "Decree for plaintiff in favour of his claim and costs against defendant" had nothing about them specifying clearly, as required by the Act, any relief in the shape of enforcement of lien against the property hypothecated; the decree, therefore, was simply a decree for money. THAMMAN SINGH *v.* GANGA RAM. *Oldfield* and *Straight*, JJ.....**I. L. Rep. 2 All. 342, 1879.**

DECREE—*contd.*

3.—— *Construction of — What it must contain — Civil Procedure Code, Act X. of* 1877, § 206.] Where the plaintiff by his claim sought for a decree for money and enforcement of a lien on the property hypothecated by the bond on which the claim was based, and the judgment declared the lien good and valid, but the decree was simply for the "claim as brought," without any specification in it as to the relief sought by the plaintiff by charging the property hypothecated:—

Held, that such a decree was nothing more than a money decree, and did not enforce the charge on the property. *Muluk Fuqueer Bakhsh* v. *Manohar Das* (H. C. Rep., N. W. P. 1870, p. 29) followed. HARSUKH *v.* MEGHRAJ.....**I. L. Rep. 2 All. 345.**

DECREE BASED ON FICTITIOUS MORTGAGE — NULLITY AS AGAINST SUBSEQUENT PURCHASER BONA FIDE FOR VALUE.

See **Mortgage. 7.**

GOPI *v.* MARKANDE...**I. L. Rep. 3 Bom. 30.**

DECREE BY CONSENT IN A SUIT BY A CREDITOR OF A DECEASED MAHOMEDAN AGAINST THE HEIRS OF THE DECEASED IN POSSESSION OF HIS PROPERTY—When binding on Absentee Heirs.

See **Mahomedan Law. 1.**

ASSAMATHEE NESSA BIBEE *v.* ROY LUTCHMEPUT SINGH... **I. L. Rep. 4 Cal. 142.**

DECREE FOR EJECTMENT IN SUIT FOR ARREARS OF RENT, RIGHT OF PURCHASER TO QUESTION THE VALIDITY OF —BY SUIT, IF NOT A PARTY TO RENT SUIT.

See **Rent Suit.**

MADHO PROSHAD SINGH *v.* PURSHAN RAM.....**I. L. Rep 4. Cal. 250.**

Digitized by Google

DECREE FOR PARTITION—Execution of.

See **Execution of Decree. 11.**

RAJCOOMAREE *v.* GOPAL CHUNDER. **I. L. Rep. 3 Cal. 514.**

—— *Execution—Limitation—Right of Co-Sharer in Partition Suit to enforce Decree.*] A decree for partition is not like a decree for money or for the delivery of specific property, which is in favour only of the plaintiff in the suit. It is a joint declaration of the rights of persons interested in the property of which partition is sought, and having been so made it is unnecessary for those persons who are defendants in the suit to come forward, and institute a new suit to have the same rights declared under a second order made. A decree in such suits is a decree, when properly drawn up, in favour of each shareholder or set of shareholders having a separate share.

A., on the 29th June 1871, obtained a decree for partition against *B.*, his co-sharer, and on the 28th November 1876 applied to have the execution proceedings struck off the file. The application was refused, and the partition was ordered to be completed at *B.*'s expense:—*Held* that, as the execution proceedings taken either by one or the other shareholder were taken on behalf of both, limitation did not apply. SHEIKH KHOORSHED HOSSEIN *v.* NUBBEE FATIMA. *Ainslie* and *McDonnell*, JJ...**I. L. Rep. 3 Cal. 551; 2 Cal. Rep. 187, 1878.**

DECREE PAYABLE BY INSTALMENTS—*Act X. of* 1877, § 210.] *Semble, per Turner*, J.—The provisions of § 210 of Act X. of 1877 were intended to apply only to what are commonly known as money decrees and not to decrees in which a sale is ordered of immoveable property in pursuance of a contract specifically affecting the property.

Per Oldfield, J.:—Whether the decree decrees the payment of money simply, or proceeds to direct its realization by sale of a particular property mortgaged as security in the event of non-payment, it is still a "decree for payment of money," in the words of the section (§ 194, Act VIII. of 1859), when the Court may order the amount to be paid by instalments.

Where a contract is distinctly made for payment on a date certain for the purpose of enabling the creditor to obtain punctual payment, the circumstance that the payment is secured by an hypothecation of property, ought not to deprive him of that right.

DECREE PAYABLE BY INSTALMENTS—*contd.*

Where a Court, on the ground that the defendant was "hard pressed," directed the amount of a decree to be paid by instalments extending over ten years, and allowed only one-half the usual rate of interest:—

Held, that there was no sufficient reason for directing the payment of the amount of the decree by instalments, and that the Court had exercised its discretion injuriously to the plaintiff by the length of time over which the instalments were extended, and by allowing a rate of interest less than the ordinary rate. BINDA PERSAD *v.* MADHO PERSAD. *Turner* and *Oldfield*, JJ.....**I. L. Rep. 2 All. 129, 1879.**

2. —— *Discretion—Act VIII. of* 1859, § 194.] Where the Courts below, but of consideration for an innocent purchaser forced to satisfy a mortgage, awarded payment by instalments at short intervals: *Held*, not to be unreasonable under the circumstances. CARVALHO *v.* NURBIBI. *West* and *Pinhey*, JJ...**I. L. Rep. 3 Bom. 202, 1879.**

S. C. under **Interest. 7.**

DECREE AGAINST REPRESENTATIVE OF DECEASED MAHOMEDAN—Right of Purchaser at Sale in Execution of.

See **Sale in Execution of Decree. 20.**

HENDRY *v.* MUTTY LALL DHUR... **I. L. Rep. 2 Cal. 395.**

DECREE FOR SALE OF MORTGAGED PROPERTY—Assignment of.

See **Registration. 15.**

GOPAL *v.* TRIMBAK...**I. L. Rep. 1 Bom. 267.**

DECREE OF SMALL CAUSE COURT.

Suit on—will lie in High Court.

See **Suit on Decree. 2.**

KHOBLALL *v.* RAMCHUNDER...**I. L. Rep. 2 Cal. 434.**

DECREE SUBSEQUENTLY SUPERSEDED—Suit to recover Money paid under.

See **Money paid under Decree subsequently superseded.**

JOGESH CHUNDER *v.* KALI CHURN. **I. L. Rep. 3 Cal. 30.**

Digitized by Google

DECREE AGAINST SOME OF THE WIDOWS AS REPRESENTATIVES OF DECEASED MAHOMEDAN—Sale by such Widows to satisfy Decree—Minor when bound by.

See **Mahomedan Law—Infant.**

HAMIR SINGH *v.* MUSAMMAT ZAKIA.....**I. L. Rep. 1 All. 57.**

DECREE ON SPECIALLY REGISTERED AGREEMENT—Appeal from.

See **Appeal—Civil. 7. 11. 12.**

BHYRUB CHUNDER *v.* GOLAP COOMARY.....**I. L. Rep. 3 Cal. 517.**

RAMANAND *v.* BANK OF BENGAL... **I. L. Rep. 1 All. 377.**

WILAYAT-UN-NISSA *v.* WAJIB-UN-NISSA.....**Ibid. 583**

—— Limitation for Execution of.

See **Limitation. 79.**

JAI SHANKAR *v.* TETLEY.....**I. L. Rep. 1 All. 586.**

See **Appeal—Civil. 12.**

WILAYAT-UN-NISSA *v.* WAJIB-UN-NISSA.....**I. L. Rep. 1 All. 583.**

DECREE ON SPECIALLY REGISTERED MORTGAGE BOND—Sale in Execution of—Right of Purchaser.

See **Sale in Execution of Decree. 5.**

AKHE RAM *v.* NAND KISHORE...**I. L. Rep. 1 All. 236.**

DECREE AGAINST WIDOW OF DECEASED MEMBER OF UNDIVIDED MITAKSHARA FAMILY, FOR HIS DEBTS—Liability of Undivided Share of Deceased under.

See **Hindu Law—Alienation of Ancestral Property. 3.**

MUSST. PHOOLBAS *v.* LALLA JOGESHUR..**L. Rep. 3 I. A. 7; I. L. Rep. 1 Cal. 226.**

DEDICATION TO TEMPLE—Of *Deva Dasis*—Rights of Dancing Girls.

See **Immoral Custom.**

CHINNA UMMAYI *v.* TEGARAI CHETTI...**I. L. Rep. 1 Mad. 168.**

DEDICATION TO TEMPLE—*contd.*

—— Of Minor Girl.

See **Penal Code, § 372.**

REG. *v.* ARUNA CHELLAM...**I. L. Rep. 1 Mad. 164.**

DEDUCTION OF TIME NECESSARY TO OBTAIN COPY OF JUDGMENT IN COMPUTING PERIOD OF LIMITATION FOR PETITION FOR LEAVE TO APPEAL TO PRIVY COUNCIL.

See **Limitation. 90.**

JAWAHIR LAL *v.* NARAIN DAS... **I. L. Rep. 1 All. 644.**

See **Letters Patent (Allahabad), Cl. 10. 2.**

FAZAL MUHAMAD *v.* PHUL KUAR.. **I. L. Rep. 2 All. 192.**

DEDUCTION OF TIME OCCUPIED IN SEEKING EXECUTION OF DECREE IN COURT WITHOUT JURISDICTION.

See **Limitation. 40.**

JIWAN SINGH *v.* SARNAM SINGH... **I. L. Rep. 1 All. 97.**

DEDUCTION OF TIME OCCUPIED IN UNSUCCESSFUL ENHANCEMENT SUIT, IN SUIT FOR ARREARS OF RENT AT ADMITTED RATE, NOT ALLOWED.

See **Limitation. 9.**

BROJENDRO COOMAR *v.* RAKHAL CHUNDER...**I. L. Rep. 3 Cal. 791.**

DEDUCTION OF TIME OCCUPIED IN UNSUCCESSFUL SUIT FOR KHAS POSSESSION, IN SUIT FOR ARREARS OF RENT, NOT ALLOWED.

See **Limitation. 10.**

HURRO PROSHAD ROY *v.* GOPAUL DASS DUTT.....**I. L. Rep. 3 Cal. 817.**

DEDUCTION OF TIME OCCUPIED BY PROCEEDINGS IN WRONG COURT.

See **Limitation. 41.**

SHETH KAHANDAS *v.* DHAIABHAI... **I. L. Rep. 3 Bom. 182.**

Digitized by Google

DEDUCTION OF TIME OCCUPIED IN PROSECUTING SUITS IN COURTS WITHOUT JURISDICTION—In suits under Act XVIII. of 1873.

See **Limitation. 39.**

TIMMAL KUARI *v.* ABLAKH RAI ... **I. L. Rep. 1 All. 254.**

DEDUCTION OF TIME OCCUPIED BY FORMER SUIT.

See **Limitation. 91.**

PUTALI MEHETI *v.* TULJA... **I. L. Rep. 3 Bom. 223.**

DEED—Of Assignment of Mortgage for more than Rs. 100, for Consideration less than Rs. 100.

See **Registration. 7.**

SATRA *v.* VISRAM.....**I. L. Rep. 2 Bom. 97.**

—— Does not import Consideration—between Hindus.

See **Registration. 28.**

RAJU BALU *v.* KRISHNARAV..... **I. L. Rep. 2 Bom. 273-291.**

—— In English Form, between Hindus—Contruction.

See **Mortgage. 31. 32.**

PITAMBAR *v.* VANMALI.....**I. L. Rep. 2 Bom 1.**

JAGJIVAN *v.* SHRIDHAR.....**Ibid. 252.**

—— By *Parda* Woman.

See **Pardanushin Female. 2.**

TACOORDEEN *v.* NAWAB SYED ALI. **L. Rep. 1 I. A. 192.**

—— Cancelling Signature to—Misrepresentation—Contract Act IX. of 1872, §§ 18-19.

See **Cancellation of Signature.**

THE ORIENTAL BANK *v.* FLEMING. **I. L. Rep. 3 Bom. 242.**

—— Setting Aside.

See **Setting aside Deed.**

See **Pardanushin Female. 2.**

TACOORDEEN TEWARRY *v.* NAWAB SYED ALI HOSSEIN KHAN... **L. Rep. 1 I. A. 192.**

DEED DECLARED A FORGERY—Suit to have.

See **Limitation. 57.**

FAKHARCODEEN MAHMED AHSAN *v.* POGOSE.....**I. L. Rep. 4 Cal. 209.**

See **Declaratory Decree. 12.**

SHIB LAL *v.* HIRA LAL.....**I. L. Rep. 1 All. 622.**

DEED OF PARTITION—Registration of.

See **Registration. 9.**

SHANKAR *v.* VISHNU...**I. L. Rep. 1 Bom. 67.**

DEED OF TRUST GIVING TRUSTEES POWER OF SALE OF LAND IN MOFUSSIL—Suit by Creditor to have Trust carried out.

See **Suit for Land. 2.**

DELHI AND LONDON BANK *v.* WORDIE...**I. L. Rep. 1 Cal. 249.**

DE FACTO GUARDIAN—Powers of.

See **Mortgage. 29. 30.**

ABHASSI BEGUM *v.* MOHARANEE RAJROOP...**I. L. Rep. 4 Cal. 33.**

DEBI DUTT SAHOO *v.* SUBODRA BIBEE...**I. L. Rep. 2 Cal. 283.**

DEFAMATION — Damages for — Nominal Damages.

See **Damages. 2.**

FUTEEK PAROOEE *v.* MOHENDER NATH...**I. L. Rep. 1 Cal. 385.**

—— Parties to Suit for.

See **Parties to Suit. 6.**

SUBBAYAR *v.* KRISTNAYYAR. **I. L. Rep. 1 Mad. 383.**

—— *Penal Code*, §§ 52, 499 (*Exceptions*)—Bona Fides—*Act XVIII. of* 1862, §§ 26-27—*Evidence Act I. of* 1872, § 105.] Sections 26 and 27 of Act XVIII. of 1862 are still law, but apply only to the High Courts, and not to the Mofussil Courts.

Since the passing of the Evidence Act (I. of 1872, § 105), it is, in all criminal cases tried in the Mofussil, incumbent on the accused to show the existence of circumstances, if any, which bring his case within any of the general exceptions in the Penal Code, or within any special

Digitized by Google

DEFAMATION—*contd.*

exception or proviso contained in any other part of that Code, or in any law defining the offence with which he is charged.

In dealing with the question of the good faith of a person accused of defamation, contained in a petition to a Magistrate, in which he stated that the prosecutor was preparing to bring false charges against him, and which petition was founded upon statements made to the accused by third persons that they had overheard the prosecutor discussing with others the possibility of getting up a case against the accused : the proper point to be decided is, not whether the evidence of the persons so giving such information to the accused is true, but whether the accused was told of the conspiracy against him by his witnesses, and had reasonable ground, with due care and attention, for believing their statements.

Per Markby, J.—Although §§ 235 and 237 of the Code of Criminal Procedure, Act XXV. of 1861, have been repealed, and the New Code of Criminal Procedure does not contain any analogous provisions; yet from § 439, Illustration (*a*), it may be inferred that the absence of all general exceptions is to be assumed as before without allegation, and that the averment of the absence also of some other exceptions is to be assumed, but whether this applies to all exceptions is not clearly stated. It affects, however, only the statement of the offence in the charge. *In the matter of the Petition of* SIBHO PROSAD PANDA. *Markby* and *Prinsep*, JJ...**I. L. Rep. 4 Cal. 124 ; 3 Cal. Rep. 122, 1878.**

DEFAULT IN APPEARANCE.

—— Power of Small Cause Court to restore Case struck off for.

See **Small Cause Court, Presidency Town. 1.**

SIB CHUNDER *v.* KISSEN DYAL...**I. L. Rep. 1 Cal. 476.**

DEFAULTING PURCHASER — Appeal lies from Order on Application to make —liable for Loss on Resale.

See **Appeal—Civil. 17.**

RAM DIAL *v.* RAM DAS...**I. L. Rep. 1 All. 181.**

DEFINED SHARE—Gift of.

See **Mahomedan Law—Gift. 1.**

JIWAN BAKSH *v.* IMTIAZ BEGAM... **I. L. Rep. 2 All. 93.**

DEFINITE SHARE (IN ZEMINDARI)—Gift of.

See **Mahomedan Law—Gift. 2.**

AMEEROONISSA KHATOON *v.* ABEDOONISSA KHATOON...**L. Rep. 2 I. A. 87.**

DELAY.

See **Acquiescence. 1.**

UDA BEGAM *v.* IMAM-UD-DIN... **I. L. Rep. 1 All. 82.**

See **Attorney and Client. 2.**

MONOHUR DOSS *v.* ROMONAUTH LAW...**I. L. Rep. 3 Cal. 473.**

See **Divorce. 2.**

WILLIAMS *v.* WILLIAMS... **I. L. Rep. 3 Cal. 688.**

—— In applying for Writ of *Habeas Corpus*.

See **Privilege from Arrest.**

In the matter of OMROITOLALL DEY...**I. L Rep. 1 Cal. 78.**

—— In Suing for Obstruction to Ancient Lights.

See **Mandatory Injunction.**

ATMARAM *v.* JAMNADAS...**I. L. Rep. 2 Bom. 133.**

DELEGATION—Of Legislative Powers.

See **Legislative Powers of the Governor General in Council. 1. 2.**

EMPRESS *v.* BURRAH...**I. L. Rep. 3 Cal. 63 ; I. L. Rep. 4 Cal. 172 ; L. Rep. 5 I. A. 178 ; L. Rep. 3 App. Ca. 889.**

DEMAND AND REFUSAL — Dower — Unsuccessful Petition for Leave to sue *in formâ Pauperis*.

See **Mahomedan Law—Dower. 1.**

RANEE KHAJOOROONISSA *v.* RANEE RYEESOONISSA...**L. Rep. 2 I. A. 285.**

—— Of Maintenance.

See **Hindu Law—Maintenance of Widow. 4. 7.**

JIVI *v.* RAMJI.....**I. L. Rep. 3 Bom. 207.**

NARRAYAN *v.* RAMABAI.....**I. L. Rep. 3 Bom. 415 ; L. Rep. 6 I. A. 114.**

Digitized by Google

DEMOLITION OF BUILDING.

See **Mandatory Injunction.**

JAMNADAS *v.* ATMARAM.....**I. L. Rep. 2 Bom. 133.**

DEPENDENT TALOOK—Enhancement of Rent of.

See **Enhancement of Rent. 2.**

HURRONATH *v.* GOBIND CHUNDER. **L. Rep. 2 I. A. 193.**

DEPOSIT OF COSTS—Power to enlarge Time for.

See **Act VI. of 1874, § 11.**

SOORJMUKHI KOER...**I. L. Rep. 2 Cal. 272.**

DEPOSIT OF MONEY FOR COSTS OF APPEAL TO PRIVY COUNCIL—Vacation—Power of Court to grant Special Permission.

See **Act VI. of 1874, § 8.**

LALLA GOPEE CHAND...**I. L. Rep. 2 Cal. 128.**

DEPOSIT OF SECURITY—DISMISSAL OF APPEAL TO THE PRIVY COUNCIL FOR DEFAULT IN.

See **Appeal to the Privy Council. 4.**

THAKOOR KAPILNATH SINGH *v.* THE GOVERNMENT.....**I. L. Rep. 1 Cal. 142.**

DEPOSIT OF SECURITY BY PERSON ENTITLED TO A CERTIFICATE UNDER ACT XXVII. OF 1860—No Appeal from Order for.

See **Appeal—Civil. 4.**

MONMOHINEE DASEE *v.* KHETTER GOPAUL DEY...**I. L. Rep. 1 Cal. 127.**

DEPOSIT OF TITLE-DEEDS.

See **Equitable Mortgage.**

DAYAL JAIRAZ *v.* JIVRAJ RATANSI. **I. L. Rep. 1 Bom. 237.**

DEPOSITIONS TAKEN BY BRITISH CONSUL AT ZANZIBAR.

See **Offence committed in Foreign Territory.**

EMPRESS *v.* DOSSAJI GULAM HUSSEIN.....**I. L. Rep. 3 Bom. 334.**

DEPUTY COMMISSIONER OF POLICE—Confession to—Admissibility of.

See **Evidence. 13.**

REG. *v.* HURRIBOLE...**I. L. Rep. 1 Cal. 207.**

DEPUTY MAGISTRATE—Power of—to question Sanction to prosecute given by Superior.

See **Sanction to Prosecute. 2.**

EMPRESS *v.* IRAD ALLY.....**I. L. Rep. 4 Cal. 869.**

DESERTION.

See **Divorce. 1. 3.**

WOOD *v.* WOOD.....**I. L. Rep. 3 Cal. 485.**

FOWLE *v.* FOWLE...**I. L. Rep. 4 Cal. 260.**

DESHMUKH.

See **Pensions' Act XXIII. of 1871. 6.**

VASUDEV *v.* THE COLLECTOR OF RATNAGIRI.....**I. L. Rep. 2 Bom. 99; L. Rep. 4 I. A. 119.**

DESHMUKHI HAKS—Suit for.

See **Pensions' Act XXIII. of 1871. 6.**

VASUDEV *v.* THE COLLECTOR OF RATNAGIRI.....**I. L. Rep. 2 Bom. 99; L. Rep. 4 I. A. 119.**

DESHPANDE WATAN—Right to Share in—Suit for Declaration of.

See **Pensions' Act XXIII. of 1871. 5.**

BABAJI *v.* RAJARAM...**I. L. Rep. 1 Bom. 75.**

DETERMINATION OF ISSUE NOT ABSOLUTELY NECESSARY FOR THE DECISION OF THE CASE.

See **Res Judicata. 27.**

MAN SINGH *v.* NARRAYAN DAS... **I. L. Rep. 1 All. 480.**

DEVA DASIS—Dedication of.

See **Immoral Custom.**

CHINNA UMMAYI *v.* TEGARAI CHETTI...**I. L. Rep. 1 Mad. 168.**

See **Penal Code, § 372.**

REG. *v.* ARUNA CHELLAM...**I. L. Rep. 1 Mad. 164.**

Digitized by Google

DEVISE—Of Debt—Representative of Devisee cannot sue without Probate or Certificate under Act XXVII. of 1860.

See **Assignee of Debt.**

SHODONE *v.* HALALKHORE...**I. L. Rep. 4 Cal. 645.**

DEVISE ON CONDITION OF RESIDENCE.

See **Will. 10.**

GANENDRO MOHUN TAGORE *v.* RAJAH JUTTENDRO MOHUN TAGORE...**L. Rep. 1 I. A. 387.**

DEVISEE OF DECEASED HINDU—Liability of Lands purchased from—for Debts of his Testator.

See **Limitation. 38a.**

GREENDER CHUNDER GHOSE *v.* MACKINTOSH...**I. L. Rep. 4. Cal. 897.**

DEWASTHAN PROPERTY—Suit relating to.

See **Right to Sue. 10.**

RADHABAI *v.* CHIMNAJI RAMJI SALI. **I. L. Rep. 3 Bom. 27.**

DEWUTTUR.

See **Hindu Law—Partition. 7.**

RAM COOMAR *v.* JOGENDAR NATH. **I. L. Rep. 4 Cal. 56.**

See **Hindu Law—Will. 13.**

ASHUTOSH *v.* DOORGA CHURN..... **L. Rep. 6 I. A. 182.**

1. —— Res judicata—*Power of* Sebait *to bind the Idol's Estate.*] On the 27th February 1852, and the 25th July 1854, the respondent obtained two decrees against the *sebait* of an idol upon two bonds for the repayment of money alleged therein to have been borrowed for the service of the idol, and the expenses of the temple. Both decrees directed that the debt should be paid by the *sebait* personally, or else realized from the rents and profits of the *dewuttur* lands.

In a suit by the appellants as *sebaits* in succession to the judgment debtor to set aside the decrees, and to have the *dewuttur* property of the idol released from the attachment issued in execution thereof:—

Held, that the decrees were entitled to the force due to judgments of competent Courts. The determination of the issues was *res judicata*, and in the absence of proof of fraud and collusion, the necessary and proper issues having been raised, tried, and determined, the judgments founded upon them could not be re-opened and reviewed; but were binding upon the succeeding *sebaits*, who formed a continuing representation to the idol's property. Although property devoted to religious purposes is, as a rule, inalienable, it is competent for the *sebait* of property dedicated to the worship of an idol, in the capacity of *sebait* and manager of the estate, to incur debts and borrow money for the proper expenses of keeping up the religious worship, repairing the temples or other possessions of the idol, defending hostile litigious attacks, and other like objects. The power to incur such debts must be measured by the existing necessity for incurring them, the authority of the *sebait* of an idol's estate being, in this respect, analogous to that of the manager for an infant heir. PROSUNNO KUMARI DEBYA *v.* GOLAB CHAND BABOO.....**L. Rep. 2 I. A. 145; 22 W. R. 253; 14 Beng. L. R. 450, 1875.**

2. ——*Hindu Law—Endowment—Powers of* Sebait—*Notice to Purchaser.*] A plaintiff who seeks to set aside an alienation of lands on the ground that they are *dewuttur*, *i.e.*, dedicated in perpetuity to support the worship of an idol must give very strong and clear evidence of the endowment. The mere fact that the rents of a mehal have been applied for a considerable time to the worship of the idol, is not sufficient proof that the mehal is *dewuttur*.

The *sebait* of a *dewuttur* estate has authority, where it is requisite for the benefit of the endowment, to raise money by alienating a part of the estate, his position being analogous to that of the manager of an infant.

The deeds of conveyance of certain lands stated them to be *dewuttur*, and that the temple was out of repair, and that the purchase money was necessary for the repairs and for various other things requisite for the idol. In a suit to set aside the sale it appeared that at the time of the transaction the temple required repairs, but that the vendor had not applied the whole of the purchase-money to them. There was no evidence of any collusion on the part of the purchaser, or that he was aware at the time of the purchase that the money was to be applied otherwise than the conveyance expressed:—

Digitized by Google

DEWUTTUR—*contd.*

Held, that the sale was valid. The admissions in the deeds must be taken as a whole, and according to them the sale was justifiable even if the property were *dewuttur*. Even if part of the money only was required for the repairs of the temple, or was represented to be so required, and this was *bonâ fide* believed in by the purchaser, the deeds would not be wholly void by reason that some of the money was raised for another purpose, and that would not be a ground for setting the deeds aside altogether, as the purchaser would be entitled to be reimbursed so much of the money as had been legitimately advanced. KOONWAR DOORGANATH ROY *v.* RAM CHUNDER SEN...**L. Rep. 4 I. A. 53, 1876; I. L. Rep. 2 Cal. 341.**

DHAREKARI.

See **Kabulayatdar Khot.**

KRISHNAJI *v.* RAMCHANDRA...**I. L. Rep. 1 Bom. 70.**

DHARMAKARTASHIP OF PAGODA—Limitation to Suit for.

See **Limitation. 64.**

MANALLY CHENNA *v.* MANGADU... **I. L. Rep. 1 Mad. 343.**

DIGNITY—SUIT TO VINDICATE.

See **Suit to Vindicate a mere Dignity.**

DILUVIATED LAND.

See **Alluvial Land.**

RADHA PROSHAD *v.* RAM COOMAR. **I. L. Rep. 3 Cal. 796.**

—— Non-Payment of Rent on account of—Extinguishment thereby of Right of Occupancy in—on their Re-formation.

See **Extinguishment of Right of Occupancy.**

HEMNATH DUTT *v.* ASHGUR SINDAR.....**I. L. Rep. 4 Cal. 894.**

—— Re-formation of.

See **Re-formation of Submerged Lands.**

DIMINUTION OF WATER SUPPLY.

See **Penal Code, § 430.**

RAMKRISHNA *v.* PALANIYANDI...**I. L. Rep. 1 Mad. 262.**

DIRECTORS—Power of—to borrow Money.

See **Power of Directors to Borrow and Mortgage.**

IRVINE *v.* UNION BANK OF AUSTRALIA .....**L. Rep. 4 I. A. 86; I. L. Rep. 3 Cal. 280.**

See **Power of Directors to bind Company by Bill of Exchange.**

NEW FLEMING S. & W. Co., LIMITED.....**I. L. Rep. 3 Bom. 439.**

DISCHARGE OF ACCUSED—Evidence for Prosecution must all be taken before.

See **The Cases under Criminal Procedure Code, Act X. of 1872, § 215.**

—— Revival of Prosecution.

See **Compounding Offences. 5.**

REG. *v.* DEVAMA.....**I. L. Rep. 1 Bom. 64.**

See **Criminal Procedure Code, Act X. of 1872, § 295. 1.**

DIJAHUR DUTT.....**I. L. Rep. 4 Cal. 647.**

See **The Cases under Revival of Prosecution.**

DISCHARGE FROM IMPRISONMENT—Application for.

See **Civil Procedure Code, Act X. of 1877, § 342.**

RATTANSI KALIANJI...**I. L. Rep. 2 Bom. 148.**

DISCHARGE OF SURETY—Accommodation Acceptor—Bankruptcy of Drawer—Trust Deed for Benefit of Creditors—Equitable Mortgage to Acceptor by Drawer.

See **Principal and Surety. 4.**

POGOSE *v.* BANK OF BENGAL.....**I. L. Rep. 3 Cal. 174.**

—— Giving Time—Acceptance of Interest in Advance.

See **Principal and Surety. 2.**

MOTAB CHUNDER *v.* GOUR CHUNDER...**I. L. Rep. 4 Cal. 132.**

—— Giving Time—Execution of Decree.

See **Principal and Surety. 3.**

RAMANAND KOONDOO *v.* CHOWDHRY SOONDER SARUNGY...**I. L. Rep. 4 Cal. 331.**

Digitized by Google

DISCONTINUANCE OF EASEMENT.

See **Easement. 1.**

SHAMA CHURN *v.* TARINEY CHURN. **I. L. Rep. 1 Cal. 422.**

DISCONTINUANCE OF FAMILY CUSTOM.

See **Family Custom.**

RAJKISHEN *v.* RAMJOY SURMA...**I. L. Rep. 1 Cal. 186.**

DISCRETION.

See **Decree payable by Instalments.**

BINDA PERSAD *v.* MADU PERSAD. **I. L. Rep. 2 All. 129.**

CARVALHO *v.* NURBIBI.....**I. L. Rep. 3 Bom. 202.**

—— As to Amount of Commission awarded to Administrator General, when interfered with on Appeal.

See **Administrator General's Act II. of 1874, § 27.**

SOMASUNDARAM *v.* ADMINISTRATOR GENERAL ... **I. L. Rep. 1 Mad. 148.**

—— As to Costs—Mortgagee's—Usurious Contract.

See **Costs. 1.**

CARVALHO *v.* NURBIBI .....**I. L. Rep. 3 Bom. 202.**

—— As to Costs reviewable on Appeal, but not Special Appeal unless Order Illegal.

See **Costs. 2.**

FUTEEK PAROOEE *v.* MOHENDER NATH.....**I. L. Rep. 1 Cal. 385.**

—— Interest—Award of, after Suit, at less than agreed Rate.

See **Interest. 7.**

CARVALHO *v.* NURBIBI...**I. L. Rep. 3 Bom. 202.**

DISHONOUR—NOTICE OF

See **Hundi. 1.**

GOBIND RAM *v.* MATHOORA...**I. L. Rep. 3 Cal. 339.**

DISMISSAL OF APPEAL TO THE PRIVY COUNCIL FOR DEFAULT IN DEPOSIT OF SECURITY, AND IN TRANSCRIBING RECORD.

See **Appeal to the Privy Council. 4.**

THAKOOR KAPILNATH SAHAI *v.* THE GOVERNMENT...**I. L. Rep. 1 Cal. 142.**

DISMISSAL FOR INCOMPETENCE.

See **Master and Servant.**

MACGILLIVRAY *v.* JOKAI ASSAM TEA CO...**I. L. Rep. 2 Cal. 33**

DISMISSAL OF SUIT.

See **Civil Procedure Code, Act VIII. of 1859, § 148.**

RYALL *v.* SHERMAN...**I. L. Rep. 1 Mad. 287.**

DISMISSAL OF A WARRANT CASE.

See **Compounding Offences. 5.**

REG. *v.* DEVAMA.....**I. L. Rep. 1 Bom. 64.**

DISOBEDIENCE OF ORDER OF PUBLIC SERVANT—*Beng. Reg. VI. of* 1819, § 6 —*Public Ferry—Plying Boats near.*] Section 6 of Beng. Reg. VI of 1819 prohibits all persons from employing a ferry-boat for hire at or in the *immediate vicinity* of public ferries without the previous sanction of the Magistrate. If, in the case of a prohibition distinctly made known to a person, he continues to ply a boat for hire at or in the *immediate vicinity* of a public ferry, he renders himself liable to punishment under the Penal Code, for disobedience of that order. MURTHA *v.* JAWAHIR. *Spankie,* J.....**I. L. Rep. 1 All. 527, 1877.**

S. C. under **Criminal Trespass. 2.**

DISPOSING OF MINOR GIRL FOR PURPOSES OF PROSTITUTION.

See **Penal Code, § 372.**

REG. *v.* ARUNA CHELLAM...**I. L. Rep. 1 Mad. 164.**

DISPOSSESSION OF LESSEE BY LESSOR—Jurisdiction of Civil and Revenue Court.

See **Act XVIII. of 1873, § 95, Cl. m.**

ABDUL AZIZ *v.* WALI KHAN.....**I. L. Rep. 1 All. 133.**

Digitized by Google

DISPOSSESSION OF SECOND BY FIRST MORTGAGEE—*Re-Entry by Mortgagee after first Mortgage settled—Cause of Action.*] In a suit brought in 1872, by the representatives of a second mortgagee, to recover possession of the mortgaged land from the representatives of the mortgagor, it appeared that the second mortgagee had obtained possession thereof in 1846 under a decree, but had been ousted at the suit of some prior mortgagees in 1847, upon whose being paid off by the mortgagor in 1870, the latter had again obtained possession :—

Held, reversing the decree of the High Court, that the decree obtained by the second mortgagee in 1846, gave him as against the mortgagors a title to the land, which was not destroyed by his ouster by the prior mortgagee, and that having a good title when the first mortgagees were paid off in 1870, the cause of action accrued to the second mortgagee when the mortgagors after that period entered into possession of the estate, to which they had no title, and that he was entitled to recover possession of the land.

The decree of the Court of first instance was also reversed so far as it decreed interest upon the mortgage money during dispossession. The mortgagee might have sued for interest, though turned out of the land, and all that he was entitled to was possession of the land; and if, when he obtained possession, the mortgagors sued to redeem, the question would be how much was due to the mortgagee under the mortgage, and how much he was entitled to receive before the mortgagors could redeem. NARAIN SINGH *v.* SHIMBHOO SINGH.....**L. Rep. 4 I. A. 15, 1876 ; I. L. Rep. 1. All. 325.**

DISPOSSESSION OF THIRD PERSON UNDER SALE IN EXECUTION OF DECREE.

See **Sale in Execution of Decree. 12**

HARASATOOLLAH *v.* BROJONATH GHOSE.....**I. L. Rep. 3 Cal. 729.**

DISQUALIFICATION TO INHERIT.

See the cases under **Hindu Law—Disqualification to Inherit.**

—— Blindness if Congenital is a.

See **Hindu Law —Disqualification to Inherit. 1. 2.**

MURARJEE *v.* PARVATIBAI ...**I. L. Rep. 1 Bom. 177.**

UMABAI *v.* BHAVU.....**Ibid. 557.**

DISQUALIFICATION TO INHERIT—*contd.*

—— Childless Widowed Indigent Daughter—Benares Law—not disqualified.

See **Hindu Law — Inheritance — Daughters. 3.**

SRIMATI UMA DEYI *v.* GOKOOLANANDDAS.....**L. Rep. 5 I. A. 40.**

—— Childless Widowhood, according to Bengal Law, excludes from Inheritance to Father, but not from Succession by Survivorship to Sister.

See **Hindu Law — Inheritance — Daughters. 2.**

AUMIRTOLALL BOSE *v.* RAJONEKANT MITTER...**L. Rep. 2 I. A. 113.**

—— Illegitimacy—Offspring of Adultery.

See **Hindu Law — Inheritance — Illegitimate Son. 4. 5. 6.**

RAHI *v.* GOVIND.....**I. L. Rep. 1 Bom. 97.**

NARAYAN *v.* LAVING...**I. L. Rep. 2 Bom. 140.**

VIRARAMUTHI *v.* SINGARAVELU... **I. L. Rep. 1 Mad. 306.**

—— Incontinence of Hindu Woman does not disquality her from Inheriting or Keeping inherited *Stridhan*.

See **Hindu Law—Disqualification to Inherit. 3.**

MUSAMAT GANGA JUTI *v.* GHASITA.....**I. L. Rep. 1 All. 46.**

—— Incontinence of Widow after Inheritance vested does not Work a Forfeiture.

See **Hindu Law—Disqualification to Inherit. 4.**

BHAYANI v. MAHTAB KUAR. **I. L. Rep. 2 All. 171.**

See **Hindu Law — Inheritance — Widow. 1.**

NEHALO *v.* KISHIN LAL.....**I. L. Rep. 2 All. 150.**

See **Hindu Law—Maintenance of Widow. 12.**

HONAMMA *v.* TIMANBHAT...**I. L. Rep. 1 Bom. 559.**

Digitized by Google

DISQUALIFICATION TO INHERIT— *contd.*

—— Incontinence of Mother disqualifies from Inheriting to Son.

See **Hindu Law—Disqualification to Inherit. 5.**

RAMNATH TOLAPATTOO *v.* DURGA SUNDARI DEBI... ..**I. L. Rep. 4 Cal. 550.**

—— Leprosy—*Sanious Ulcerous*—is a.

See **Hindu Law—Disqualification to Inherit. 6.**

ANANTA *v.* RAMABAI...**I. L. Rep. 1 Bom 554.**

—— Loss of Caste is not a.

See **Hindu Law—Disqualification to Inherit. 7.**

HONAMMA *v.* TIMANBHAT...**I. L. Rep. 1 Bom. 559.**

DISQUALIFYING INTEREST OF JUDGE—*Criminal Proceedings—Irregularity—Effect of Waiver by Prisoner—Judge giving Evidence.*] The prisoner, while occupying the post of jailor, was accused by one of the jail clerks of falsifying his books and defrauding the Government. The District Magistrate, *H.*, inquired into the matter, and by his order the prisoner was placed on trial for criminal breach of trust before a Bench of Magistrates consisting of *H.* himself and four Honorary Magistrates. One of the latter was *L.*, who at the time of the commission of the alleged offences, and at the time of trial, was officiating superintendent of the jail and the prisoner's immediate superior. The prisoner and his pleaders were asked before the commencement of the trial whether they had any objection to the composition of the Bench, and they distinctly said that they had none whatever. The prisoner's consent, however, was not formally recorded, and after the charges were drawn up, his counsel objected to the Bench as formed. *H.* instructed the Government prosecutor to prosecute, and both *H.* and *L.* gave evidence for the prosecution. After the case for the prosecution was closed, two distinct charges were framed against the accused, the first of debiting Government with the price of more oil-seed than he actually purchased, and the second of receiving payment for certain oil at a higher rate than he credited to Government. As regards the first charge, the prisoner

DISQUALIFYING INTEREST OF JUDGE—*contd.*

was alleged to have received money for the oil-seed on the strength of certain vouchers which he had induced *L.* to countersign as correct; and as to the second charge, the prisoner's defence was that *L.* had himself sanctioned the sale at the rate credited to Government. On the accused giving the names of his witnesses, *L.* was deputed by his brother magistrates to examine some of them who were connected with the jail, and to take down their statements at once in the presence of the agents of both parties, in order to prevent any suggestion that the witnesses had been tampered with, and "to guard against subsequent deviation." The depositions so taken were placed on the record "for the use of either party, though not in themselves as evidence." The prisoner was convicted. On a motion to quash the conviction:—

Held, that under the circumstances of the case the presence on the Bench of *L.*, who had a substantial interest in the prosecution, vitiated the proceedings and necessitated the quashing of the conviction. It is one of the oldest and plainest rules of justice and common sense that no man shall sit as judge in a case in which he is substantially interested, and that is the law of India as much as it is the law of England.

Without saying that it is illegal for a Magistrate to give evidence in a case with which he is dealing judicially, it is, on general principles, most undesirable that a Judge should be examined as a witness in a case which he himself is trying, if such a contingency can possibly be avoided. The mere fact that *H.* and *L.* were necessary witnesses for the prosecution, was a most cogent reason why neither of them should have been members of the Bench by which the prisoner was to be tried. Though a Magistrate may not be incapacitated from dealing with a case judicially, merely because in his character of Magistrate it may have been his duty to initiate the proceedings, yet it was wrong that the District Magistrate should deal with this case judicially when there was no necessity for his doing so, when he had himself discovered the alleged fraud, and initiated the prosecution, and was one of the principal witnesses against the prisoner.

The examination, in the manner stated above, of the witnesses named by the accused, was a most unfair and irregular proceeding, and was illegal and unjustifiable.

Digitized by Google

DISQUALIFYING INTEREST OF JUDGE—*contd.*

Criminal proceedings are bad unless conducted in the manner prescribed by law; and if they are substantially bad in themselves, the defect will not be cured by any waiver or consent of the prisoner. REG. *v.* BHOLANATH SEN. *Macpherson* and *Morris*, JJ...**I. L. Rep. 2 Cal. 23, 1876.**

See **Evidence. 22.**

DISSENT OF COURT FROM VERDICT OF JURY.

See **Criminal Procedure Code, Act X. of 1872, § 263. 2.**

IMPX. *v.* BHAWANI...**I. L. Rep. 2 Bom. 525.**

See **Appeal—Criminal. 2.**

REG. *v.* HARI...**I. L. Rep. 2 Bom 526, n.**

DISSENTIENT SHAREHOLDERS—Right of—on a Transfer of Assets to New Company.

See **Company—Winding up. 1.**

In re THE FLEMING S. & W. Co. (LIMITED).....**I. L. Rep. 3 Bom. 299.**

DISSOLUTION OF PARTNERSHIP—Suit for—Jurisdiction exists where all partners reside, as well as at Place of Business.

See **Jurisdiction. 6.**

RAMASAMI *v.* THERUVENGADASAMI. **I. L. Rep. 1 Mad. 340.**

DISTINCT OFFENCES—Separate Charges of.

See **Criminal Procedure Code, Act X. of 1872, § 452.**

REG. *v.* HANMANTA...**I. L. Rep. 1 Bom. 610.**

See **Criminal Procedure Code, Act X. of 1872, §§ 453, 454.**

EMPRESS *v.* DUNONJOY BARAJ...**I. L. Rep. 3 Cal. 540.**

DISTINCT SUBJECTS—Suit embracing two or more—Court Fees.

See **Court Fees. 7.**

CHAMAILI RANI *v.* RAM DAI...**I. L. Rep. 1 All. 552.**

DISTRAINT.

See **Madras Act VIII. of 1865, § 49.**

SHRINIVAS *v.* EMPERUMANA...**I. L. Rep. 2 Mad. 42.**

—— Suit to set aside Wrongful.

See **Right to Sue. 9.**

HORRO NARAIN *v.* SHOODHA KRISHTO...**I. L. Rep. 4 Cal. 890.**

—— Suit for Value of Crops—Jurisdiction of Small Cause Court.

See **Beng. Act VIII. of 1869, § 98.**

HYDER ALI *v.* JAFAR ALI...**I. L. Rep. 1 Cal. 183.**

DISTRIBUTION—Postponement of Period of—of Gift of Residue to a Class.

See **Will. 4. 5.**

MASEYK *v.* FERGUSSON.....**I. L. Rep. 4 Cal. 304, 670.**

DISTRIBUTION OF EXECUTION SALE PROCEEDS OF PROPERTY OF DEFENDANT—Pauper Suit—Prerogative Right of Crown in respect of Court Fees.

See **Prerogative of the Crown.**

COLLECTOR OF MORADABAD *v.* MUHAMMAD DAIM KHAN.....**I. L. Rep. 2 All. 196.**

DISTRIBUTIONS—STATUTE OF—(22 & 23 Car. II., C. 10)—Advancement— Rule as to—not preserved to Parsis.

See **Act XXI. of 1865, § 8.**

DHANJIBHAI *v.* NAVAZBAI...**I. L. Rep. 2 Bom. 75.**

DISTRICT COURT OF AKYAB—Jurisdiction of.

See **Jurisdiction. 9.**

In re ABDOOL HAMED...**I. L. Rep. 4 Cal. 94.**

DISTRICT COURTS MENTIONED IN REGISTRATION ACT VIII. OF 1871, SUBJECT TO SUPERINTENDENCE OF HIGH COURT.

See **Review. 8.**

REASUT HOSSEIN *v.* HADJEE ABDOOLLAH...**L. Rep. 3 I. A. 221; I. L. Rep. 2 Cal. 131.**

Digitized by Google

DISTRICT JUDGE—Appeal to—in Suits for Rent less than Rs. 100—Question of Proprietary Right.

See **Act XVIII. of 1873, § 93. 3.**

BISHESHUR SINGH *v.* MUSST. SUGUNDHI...**I. L. Rep. 1 All. 366.**

—— Appeal to—Value of Subject-matter of Dispute.

See **Bengal Civil Courts' Act VI. of 1871, § 22.**

KALI CHARAN RAI *v.* AJUDHIA RAI...**I. L. Rep. 2 All. 148.**

—— Jurisdiction of—Suit against a Municipality.

See **Suit against a Municipality.**

THE AHMEDABAD MUNICIPALITY MAHOMED ISMAIL...**I. L. Rep. 3 Bom. 146.**

—— Jurisdiction of—Suit against Defendants resident within Jurisdiction, for disturbing Plaintiff's Right to fish in the Sea.

See **Jurisdiction. 10.**

BABAN *v.* NAGU...**I. L. Rep. 2 Bom. 19.**

—— Power of—to interfere with Order for Local Investigation.

See **Local Investigation.**

NIROD KRISHNA ROY *v.* WOOMANATH MOOKERJEE.....**I. L. Rep. 4 Cal. 718.**

—— Power of—to transfer to his own Court, Execution Proceedings pending in Subordinate Court.

See **Civil Procedure Code, Act VIII. of 1859, § 6.**

GAYA PARSHAD *v.* BHUP SINGH... **I. L. Rep. 1 All. 180.**

DISTRICT MAGISTRATE—Course to be pursued by—on Improper Discharge of Accused Persons by Subordinate Magistrate.

See **Criminal Procedure Code, Act X. of 1872, § 295.**

DIJAHUR DUTT.....**I. L. Rep. 4 Cal. 647.**

See the cases under **Revival of Prosecution.**

DISTRICT MAGISTRATE—*contd.*

—— Power of—to remand a Case triable by a Magistrate only, after a Discharge by Subordinate Magistrate.

See **Criminal Procedure Code, Act X. of 1872, § 295. 1.**

DIJAHUR DUTT.....**I. L. Rep. 4 Cal. 647.**

DISTURBANCE OF OFFICE—Of Dancing Girl.

See **Dancing Girl.**

KAMALAM *v.* SADAGOPA SAMI... **I. L. Rep. 1 Mad. 356.**

1.——*Office of* Chalwadi—*Caste Question.*] The plaintiff was the hereditary holder of the office of *Chalwadi*, or bearer, on public occasions, of the insignia or symbols of the Lingayat caste at Bagalkot. No fees were as of right appurtenant to that office, but members of the caste might bestow voluntary gratuities on the *Chalwadi*.

In a suit by the plaintiff against an intruder on his office to establish his right to perform the duties of *Chalwadi*, and for damages for loss of income:—

Held, that the action would not lie if it were brought merely for gratuities received by the intruder, as moneys alleged to be received by the defendant to the use of the plaintiff.

Held, also, that the claim of the plaintiff to be *Chalwadi* of the Lingayat caste at Bagalkot was a caste question within the meaning of the unrepealed portion of Cl. 1 of § 21, Regulation II. of 1827, for the alleged duty of the *Chalwadi* being to carry the insignia of the caste at public ceremonials, without any right to levy fees or receive salary for the performance of that duty, it was essentially a matter which concerned the caste exclusively. SHANKARA MARABASAPA *v.* HANMA BHIMA. *Westropp*, C.J., and *Melvill*, J... **I. L. Rep. 2 Bom. 470, 1877.**

2.——*Damages*—Vatandar Joshi—*Injunction*—Onus Probandi.] The burden of proving that the *vatandar joshi* of a village is not entitled to officiate and take fees in the families of any particular caste, lies upon the persons asserting the exemption. The *vatandar joshi* of a village is entitled to recover damages from a person who has intruded upon his office and received fees properly payable to him; but the Court will not grant an injunction against such intruder which would have the effect of forcing upon any

Digitized by Google

DISTURBANCE OF OFFICE—*contd.*

section of the community, the services of a priest whom they are unwilling to recognize, and forbidding them to employ a priest whose ministrations they desire. RAJA SHIVAPPA *v.* KRISHNABHAT. *Melvill* and *Kemball*, JJ...**I. L. Rep. 3 Bom. 232, 1878.**

DIVESTING OF PROPERTY VESTED BY INHERITANCE.

See **Hindu Law—Adoption. 13.**

KALLY PROSONNO *v.* GOCOOL CHUNDER...**I. L. Rep. 2 Cal. 295.**

DIVESTING OF VESTED INTEREST GIVEN BY WILL.

See **Will. 9.**

C. M. HUNTER...**I. L. Rep. 4 Cal. 420.**

DIVISION BENCH—Appeal from Judgment of.

See **Letters Patent—Allahabad—Cl. 10. 1.**

GHASI RAM *v.* MUSAMAT NURAJ BEGUM...**I. L. Rep. 1 All. 31.**

—— Appeal from Judgment of—where Judges differ, not confined to Points of Difference.

See **Appeal—Civil. 17.**

RAM DIAL *v.* RAM DAS.....**I. L. Rep. 1 All. 181.**

DIVORCE—Hindu Law.

See **Hindu Law—Divorce.**

KUDOMEE DOSSEE *v.* JOTEERAM KOLITA...**I. L. Rep. 3 Cal. 305.**

See **Hindu Law — Inheritance — Illegitimate Son. 4.**

RAHI *v.* GOVIND...**I. L. Rep. 1 Bom. 97.**

See **Penal Code, § 494.**

REG *v.* SAMBHU...**I. L. Rep. 1. Bom. 347.**

—— Mahomedan Law.

See the cases under **Mahomedan Law—Divorce.**

1. ——*Act IV. of* 1869—*Suit for Dissolution of Marriage—Adultery—Desertion.*] In a suit by a wife for a dissolution of her marriage on the ground of her husband's adultery and desertion,

DIVORCE—*contd.*

the adultery was proved, and it was found that the wife, notwithstanding the gross misconduct of her husband, continued to live with him for some years, during which time she supported her husband and herself by her own earnings, he contributing nothing for her support; that eventually, under the pressure of pecuniary difficulties brought about by her husband's extravagance and dissolute habits, they came to an arrangement by which she went to live with her friends, and he at his mother's house, until they could find means again to provide a common house; that for two years previously to the separation, though they lived together, no conjugal intercourse took place between them, owing to the husband's misconduct; that he left his mother's house without telling his wife where he was going, and subsequently went to Madras, where he had since resided.

Held by *Kennedy* J., following *Fitzgerald* v. *Fitzgerald* (L. Rep. 1 P. & D. 694), that the separation having originally been by mutual consent, desertion could not take place until cohabitation had been resumed; desertion not being proved, the wife was only entitled to a decree for judicial separation.

Held on appeal, that though where the separation is the act of the wife, or where she of her own free will assents to a complete separation, there can be no desertion; nor until the husband and wife have again cohabited, can subsequent conduct transform what was a voluntary separation into desertion by the husband; yet the present was not a case of that kind. The separation was not brought about by the wife, nor in accordance with her wishes, but by the misconduct of the husband, and that, under the circumstances, the desertion was proved, and petitioner entitled to a decree for a dissolution of marriage. WOOD *v.* WOOD...*Garth*, C.J., and *Markby*, J...**I. L. Rep. 3 Cal. 485; 1 Cal. Rep. 485, 1878.**

2. ——*Divorce Act IV. of* 1869, § 14—*Delay—Connivance.*] Though there is no absolute limitation in the case of a petition for dissolution of marriage on the ground of the adultery of the wife, yet the first thing which the Court looks to when the charge of adultery is preferred is whether there has been such delay as to lead to the conclusion that the husband had either connived at the adultery or was wholly indifferent to it; but any presumption arising from apparent delay may always be removed by an

Digitized by Google

DIVORCE—*contd.*

explanation of the circumstances. That principle is recognized in § 14 of Act IV. of 1869. WILLIAMS *v.* WILLIAMS. *Garth*, C.J., *Markby* and *Birch*, JJ...**I. L. Rep. 3 Cal. 688, 1878.**

3. —— *Divorce Act IV. of* 1869, § 3, *Cl.* 9—§ 10 *and* § 37—*Desertion—Adultery—Judicial Separation—Alimony—Form of Decree—Costs.*] A husband and wife living in British Burmah separated in 1861; the wife, for reasons of convenience, going to England, but with no intention of a permanent separation. After her departure her husband contracted an adulterous permanent connection with a Burmese woman, which was however, unknown to the wife, as far as exact information went, until 1875. During the separation he kept up correspondence with his wife, and in some of his letters expressed an intention of never returning to England; and in 1868 expressed his willingness to aid his wife in obtaining a divorce.

The husband and wife continued to live apart till 1876, when the wife, having received positive information of the adulterous connection formed by her husband, returned to Burmah, not with the intention of demanding a renewal of conjugal relations, but with the view of commencing proceedings for a divorce. During the period of the separation the only complaint ever made by the wife, was as regards the insufficiency of the allowance made her by her husband.

Held, that the wife was not entitled to a divorce, but only to a judicial separation, as there was no evidence of desertion.

Desertion, by the Indian Divorce Act (IV. of 1869) implies an abandonment against the wish of the person charging it, and though "abandonment" is not defined, yet the effect of that clause is to introduce into the Indian Statute Law, the view adopted by the Courts in England in construing the English Act.

The words "against the wish" must be construed as meaning, contrary to an actively expressed wish of the person charging, and notwithstanding the resistance or opposition of such person, and not simply as meaning an act done when the wish of the person affected by it is the other way.

The decisions of the Probate and Divorce Courts in England, must usually and necessarily be a guide to the Courts in India under the Divorce Act, except when the facts of any particular case, arising out of the peculiar circumstances of Anglo-Indian life, constitute a situation such as the English Court is not likely to have had in view.

Even if the permanent adulterous connection formed by the husband amounted to desertion, it could only have commenced when the wife became aware of it. The wife was bound to give evidence of conduct on her part showing unmistakably that such desertion was against her will; in other words, to have taken some steps towards the renewal of that intercourse which had been so long suspended. This she had not done; the facts, therefore, which were relied upon as desertion, amounted only to a prolonged and systematic adultery.

In granting alimony to a wife, the Courts ought not, even if they have the power, to tie up the property of the husband (he being a mercantile man and requiring the unfettered use of his capital), or convert alimony into an absolute interest in, and charge upon his estate. *Hyde* v. *Hyde* (4 S. & T. 80) followed.

With regard to the costs, the Court said (*p.* 281); "We find that this is an appeal which was not unreasonably preferred. There were undoubtedly points of difficulty in it, and though it is true that the question of cruelty was pressed on one side, we must, on the other hand, bear in mind the aggravated and unexpected turn given to the case in the Court below by the charge of misconduct suddenly brought against Mr. Fowle (the appellant). We think, therefore, in accordance with the practice which is laid down in *Jones* v. *Jones* (L. Rep. 2 P. & D. 333) that the wife should have the reasonable costs of her appeal." To give the Courts in this country jurisdiction to dissolve a marriage solemnized out of India, the adultery complained of must have occurred in India. *Per Jackson*, C.J. (Offg.) FOWLE *v.* FOWLE. *Jackson*, C.J., (Offg.), *Markby* and *Prinsep*, JJ...**I. L. Rep. 4 Cal. 260; 3 Cal. Rep. 484, 1878.**

DIVORCE ACT IV. OF 1869.—§ 3, Cl. 9—§§ 10 and 37—Desertion—Adultery.
See **Divorce. 3.**
FOWLE *v.* FOWLE...**I. L. Rep. 4 Cal. 260.**

—— § 14—Delay.
See **Divorce. 2.**
WILLIAMS *v.* WILLIAMS.....**I. L. Rep. 3 Cal. 688.**

Digitized by Google

DOCUMENT REFERRING TO WILL—Probate of.

See **Probate. 5.**

In the Goods of Sir J. WEMYSS...**I. L. Rep. 4 Cal. 721.**

DOING A RASH AND NEGLIGENT ACT.

See **Penal Code, § 304a.**

EMPRESS *v.* SAFATULLA.....**I. L. Rep. 4 Cal. 815.**

DOMICILE — English — Applicability of Act III. of 1874 to Persons having an.

See **Married Women's Property Act III. of 1874.**

ALLUMODY *v.* BRAHAM.....**I. L. Rep. 4 Cal. 140.**

—— *Service under the E. I. Company—Act X. of* 1865, §§ 2, 5, 10.] A Scotchman who had entered into the service of the East India Company and continued in that service after the Act of 1858 (21 and 22 Vict., Cl. 106,) transferring the Government of India from the East India Company to the Crown was passed, died in 1878, leaving a holograph will, which was not attested according to the provisions of the Indian Succession Act (X. of 1865), but was admittedly good according to the Scotch law. *Held*, on an application for a declaration that the document was a good will, and for a grant of probate, that the deceased had acquired an Anglo-Indian domicile, which he had not lost at the time of his death, notwithstanding the Act of 1858 and the Succession Act, and, therefore, the will not having been properly executed, probate was refused. *Wauchope* v *Wauchope* (4 Court of Session Cases, 4th Series, 945,) followed.

In the Goods of ELLIOT. *Pontifex*, J.....**I. L. Rep. 4 Cal. 106; 2 Cal. Rep. 496, 1878.**

DOWER—Alienation by Heir-at-Law—Right of Widow to follow Estate into hands of *bonâ fide* Purchaser for Value.

See **Mahomedan Law—Right of Creditors to follow the Estate of Debtor into the hands of a Purchaser from the Heir.**

SYUD BAYAZET HOSSEIN *v.* DOOLI CHAND.....**L. Rep. 5 I. A. 211; I. L. Rep. 4 Cal. 402.**

DOWER—*contd.*

—— "Prompt" and "Deferred"—Custom.

See **Mahomedan Law—Dower. 3.**

TAUFIK-NISSA *v.* GHULAM KAMBAR.....**I. L. Rep. 1 All. 506.**

—— Prompt and Deferred—Demand—Petition for Leave to sue *in formâ Pauperis*—Limitation.

See **Mahomedan Law—Dower. 1.**

RANEE KHAJOOROONISA *v.* RANEE RYEESOONISSA.....**L. Rep. 2 I. A. 235.**

—— Prompt and Deferred—Right of Wife to refuse Cohabitation until Payment of.

See **Mahomedan Law—Dower. 2.**

EIDDAN *v.* MAZHAR HUSSAIN...**I. L. Rep. 1 All. 483.**

DOWL-FEHRIST—*Registration.*] A *dowl-fehrist*, which was merely a memorandum or record by the zemindar's agents of the rent which had been settled between the zemindar and the ryots, and to which the ryots affixed their signatures in testimony of their admission of the correctness of the jumma therein recited as having been imposed on them:—*Held*, not to be a contract, or a document which required to be either registered or stamped. GUNGAPERSAD *v.* GOGUN SINGH. *Jackson* and *McDonnell*, JJ.....**I. L. Rep. 3 Cal. 322; 1 Cal. Rep. 328, 1877.**

DRAWER AND ACCEPTOR OF BILL OF EXCHANGE—Joinder of—Defendants.

See **Civil Procedure Code, Act X. of 1877, § 29.**

And *see* **Practice—Civil. 5.**

PESTONJEE *v.* MIRZA MAHOMED...**I. L. Rep. 3 Cal. 541.**

DRAWER AND ACCEPTOR—Of *Hundi*—Residing within Jurisdiction of different Courts—Misjoinder of.

See **Procedure—Civil. 1.**

BASANT RAM *v.* KOLAHAL...**I. L. Rep. 1 All. 392.**

DRAWER, DRAWEE, AND PAYEE OF HUNDI—RIGHTS AND LIABILITIES OF.

See **Hundi. 2.**

SHETH KAHANDAS *v.* DHAIABHAI. **I. L. Rep. 3 Bom. 182.**

Digitized by Google

DUE DILIGENCE.

See **Execution of Decree. 19.**

SADIK ALI *v.* MUHAMAD HUSAIN.
I. L. Rep. 2 All. 384.

DUES FOR RELIGIOUS SERVICES PERFORMED—*Act VIII. of* 1859, § 32—*Right to perform Religious Services.*] A suit will lie to recover dues for certain religious services performed; and if to determine the right thereto it becomes necessary to determine incidentally the right to perform those religious services, the Court has jurisdiction to do so. TIRU KRISHNAMA CHARIAR *v.* KRISHNA SWAMI TATA CHARIA...**L. Rep. 6 I. A. 120, 1879; I. L. Rep. 2 Mad. 62; 6 Cal. Rep. 201.**

DURESS—*Avoidance of Contract—Principal and Agent—Compromise of Criminal Charge—Authority.*] The agent of the respondent, a British subject, who had been employed by the respondent to purchase timber for him, placed his mark on certain logs of timber, some of which had been cut by himself, and some by other persons who had been employed by the appellant. The appellant thereupon complained to a Siamese officer, styled *binyakin*, under whose orders the respondent was arrested, and put into irons with an iron collar round his neck, and charged with having stolen the logs.

By the terms of the treaty between the British and Siamese Governments, it was provided that "with reference to the punishment of offences or settlement of disputes, it is agreed that all criminal cases in which both parties are British subjects, or in which the defendant is a British subject, shall be tried and determined by the British Consul."

While in custody under the above circumstances, and to get rid of the charge of having stolen the logs, the respondent's agent made an agreement to purchase them from the appellant on behalf of the respondent, at a price considerably above their value:—

Held, that the respondent was entitled to repudiate the agreement as having been made by his agent when under duress; and was entitled to recover certain moneys paid and the value of certain elephants delivered under it, less the value of the appellant's timber which the respondent had, or might have had, possession of under the agreement.

DURESS—*contd.*

Held also, that the respondent's agent being in custody on a criminal charge, had no authority to part with his employer's property, or to make an agreement to part with it, to relieve himself from such a charge. If there had been any question of a civil nature, it might have been within the scope of his authority as a general agent to compromise such a claim, but when charged with personal misconduct and a crime, which it could not be assumed that his principal had authorized, no authority from the employer could be implied that his property should be handed over to the man making the charge, in order to relieve his agent from it.

Semble—Though by the law of England if a man is under lawful imprisonment for a civil debt, an agreement made by him while subject to restraint is not, by reason of his being so subject to it, capable of being avoided, provided it be not unconscionable, yet imprisonment in a country where there is no settled system of law or procedure, and where the Judge is invested with arbitrary powers, is duress, which will avoid a contract made under such circumstances. MOUNG SHOAY ATT *v.* KO BYAW.....**L. Rep. 3 I. A. 61, 1876; I. L. Rep. 1 Cal. 330.**

DURPATNI TALOOK.

See **Patni Talook.**

BRINDABUN SIRCAR *v.* BRINDABUN DEY...**L. Rep. 1 I. A. 178.**

DUTY—*Ad valorem*—on Probate taken out after Court Fees Act came into operation.

See **Court Fees. 8.**

GASPER...**I. L. Rep. 3 Cal. 733.**

——*Ad valorem*—Probate—Annuity charged on Testator's Estate.

See **Court Fees. 9.**

RUSHTON...**I. L. Rep. 3 Cal. 736.**

—— Liability of Property on which—has been paid in England, to pay—in India.

See **Administration. 4.**

MURCH...**I. L. Rep. 4 Cal. 725.**

—— Probate—Exemption from.

See **Probate Duty, 2.**

GLADSTONE...**I. L. Rep. 1 Cal. 168.**

—— Probate—paid on Probate taken out before Act VII. of 1870, leviable on Probate taken out after that Act.

See **Court Fees. 8.**

GASPER...**I. L. Rep. 3 Cal. 733.**

Digitized by Google

DUTY—*contd.*

—— Probate—Annuity charged on Testator's Estate.
See **Court Fees. 9.**
RUSHTON...**I. L. Rep. 3 Cal. 736.**

—— Probate—Annuity—"Value."
See **Probate Duty. 1.**
RAMCHANDRA LAKSHMANJI...**I. L. Rep. 1 Bom. 118.**

DUTY OF COURT EXECUTING DECREE OF ANOTHER COURT.
See **Execution of Decree. 15.**
MERCER *v.* NARPAT RAI...**I. L. Rep. 1 All. 730.**

DUTY OF JUDGE IN FRAMING ISSUES.
See **Issues. 1.**
APAYA *v.* RAMA.....**I. L. Rep. 3 Bom. 210.**

DUTY OF PERSONS SENDING DANGEROUS GOODS.
See **Negligence.**
LYELL *v.* GANGA DAI...**I. L. Rep. 1 All. 60.**

DVYAMUSHYANA—Only Son of Separated Brother.
See **Hindu Law—Adoption. 8.**
SRIMATI UMA DEYI *v.* GOKOOLANAND DAS...**L. Rep. 5 I. A. 40; I. L. Rep. 3 Cal. 587.**

DWELLING.
See **Jurisdiction. 3.**
FATIMA BEGAM *v.* SAKINA BEGAM. **I. L. Rep. 1 All. 51.**

EASEMENT—Abandonment of.
See **Easement. 1.**

—— Acquisition of.
See **Easement. 3.**

—— Apparent and Continuous—Grant of, by Implication.
See **Easement. 4.**

—— Artificial Watercourse—Right to Flow of Water through.
See **Easement. 4.**

—— Discontinuance of.
See **Easement. 1.**

—— Interruption of User.
See **Easement. 1.**

—— Interruption of—Acquiescence.
See **Limitation. 48.**
SUBBRAMANIYA *v* RAMACHANDRA. **I. L. Rep. 1 Mad. 335, 339.**

EASEMENT—*contd.*

—— *Jalkar* is not an.
See **Jalkar.**
PARBUTTY NATH *v.* MUDHO PAROE. **I. L. Rep. 3 Cal. 276.**

—— Light and Air—Appropriation.
See **Light and Air.**
SARUBHAI *v.* BAPU...**I. L. Rep. 2 Bom. 660.**

—— Light and Air—Obstruction to.
See **Mandatory Injunction.**
JAMNADAS *v.* ATMARAM...**I. L. Rep. 2 Bom. 133.**

—— Prescription—Acquisition of Right by.
See **Easement. 1.**

1. —— *Prescription—User—Limitation Act IX. of* 1871, § 27—*Abandonment—Discontinuance.*] In a suit for a declaration of the plaintiff's right of way over a blind lane leading from a public road to the plaintiff's house, which lane the defendant, who resided at the end of the lane, had obstructed so as to prevent access to the plaintiff's house, it appeared that the house in respect of which the easement was claimed belonged in 1855 to one *H. C.*, during the time of whose occupation there was user of the right of way over the lane to the door of the house, but that *H. C.* had had the door bricked up and built a wall across, and blocking the entrance to the lane. In April 1865 the house was sold by *H. C.*, and in June 1867 was conveyed by the purchaser to the plaintiff. From the blocking up of the door until the plaintiff's purchase no user was proved. The suit was brought in June 1875, about a month after the erection by the defendant of the obstruction complained of:—

Held by *Phear*, J., that supposing there was an easement during the earlier part of *H. C.*'s possession of the house, it was entirely abandoned and intentionally put an end to by him, by the blocking up of the door. Without deciding what the effect of such abandonment might be, *qua* abandonment, which might perhaps not be materially operative until something had been done by the defendant on the faith of it, which should make the abandonment a cause of estoppel against the plaintiff's preferring his claim; yet the abandonment in the shape of effectually stopping up and putting an end to the means of access to the land of the defendant had the effect of putting an end to the continuous enjoyment of the easement, whether actual or con-

Digitized by Google

EASEMENT—*contd.*

structive, and, therefore, that the plaintiff had failed to make out the basis of his right, which was necessary to satisfy § 27 of Act IX. of 1871.

Held, on appeal—1st, that the plaintiff's claim to the property in the soil of one-half of the lane, on the ground that, it being a road lying between his house and his neighbour's, the presumption of law was that he was entitled to the half of it *usque ad medium filum* of the space between the two houses, was groundless, as being inconsistent with the right of way claimed by him and with his own title deeds, and because the presumption on which he founded his claim was only applicable to a highway, and not to a private occupation road, such as the lane in question was alleged to be.

Held, 2ndly, that the plaintiff had failed to establish a twenty years' user within the meaning of § 27 of Act IX. of 1871, and that the discontinuance of the user, caused by the bricking up of the door, had the effect of preventing the acquisition of the statutory right. The term "interruption" in § 27 of Act IX. of 1871, means an obstruction or prevention of the user of the easement by some person acting adversely to the person who claims it, and is altogether inapplicable to any voluntary discontinuance of the user by the claimant himself. The term "abandonment," on the other hand, as applied to easements, means generally the voluntary and permanent relinquishment by the dominant owner of a right which he has actually acquired. In this sense there was no abandonment in this case, because the plaintiff's right was never actually acquired, but only in the course of acquisition, at the time when the door was bricked up.

"Discontinuance" more properly described what occurred at that time; not a "discontinuance" by adverse obstruction, as the term is somewhat inappropriately used in the explanation to § 7, but such a voluntary discontinuance of the user of the easement as prevented the statutory right being acquired.

No one can be said to be in open enjoyment of an easement, who has purposely, and with the manifest intention of preventing the user of it, created some obstruction of a permanent character which renders the enjoyment of the easement, so long as the obstruction lasts, impossible. This is very different from mere non-user. What *H. C.* had done in this case was to

EASEMENT—*contd.*

incapacitate himself by his own act from any possible use or enjoyment of the way in question, and it was impossible to say that during the time this incapacity continued, he was openly enjoying the easement, and claiming right thereto, within the meaning of § 27 of Act IX. of 1871. SHAMA CHURN AUDDY *v.* TARINEY CHURN BANNERJEE. *Garth*, C.J., and *Pontifex*, J.....**I. L. Rep. 1 Cal. 422, 1876.**

2. —— *Limitation—Prescription—Custom.*] The plaintiff and defendant were owners, respectively, of two adjoining houses, the space between which was the property of the plaintiff. The roof of the defendant's house, built more than thirty years previously, overhung this space. The plaintiff having raised his house one storey, placed on it a roof, which overhung that of the defendant's house, and, under an alleged custom of the country (Ahmedabad), claimed a right to remove that portion of the defendant's roof which projected over his (plaintiff's) lands. He also sued to establish his right to an easement as against the defendant of compelling the latter to receive the rain-water from the newly-built roof of the plaintiff's house:—

Held, as to the former claim, that the plaintiff was not entitled to cut off the defendant's eaves for the purpose of building. The Limitation Act prescribes twelve years as the time within which a suit must be brought for the possession of immoveable property. After the lapse of that time the right to the possession of land perishes, along with the capacity to enforce it by suit. Taking "land" to include immoveable property of a tangible kind, the plaintiff could not after twelve years recover possession of the space occupied by the defendant's projecting roof, which must be regarded as part of that column resting on the area belonging to the plaintiff and extending indefinitely upwards. If the enjoyment by the defendant were to be regarded as a mere easement, still it had ripened into a right by interrupted user for upwards of thirty years. From either point of view the defendant's right was made out to a continued possession or enjoyment inconsistent with the right the plaintiff sought to have declared.

Held also, as to the latter claim, that the plaintiff could only acquire such an easement against his neighbour's property by contract or prescription, on neither of which did the plaintiff rely.

Digitized by Google

EASEMENT—*contd.*

No custom can be allowed to override the positive prescriptions of the Limitation Act. MOHANLAL JECHAND *v.* AMRATLAL BECHARDAS. *West* and *Pinhey*, JJ...**I. L. Rep. 3 Bom. 174, 1878.**

3.——*Right of Riparian Proprietor—Prescription—English Common Law—Act IX. of* 1871, § 27.] Under the English Common Law there could be no acquisition of a prescriptive right of easement, unless the enjoyment was of such a nature that a grant of an easement might be presumed to have been made; and this could not be presumed if the enjoyment was shown to have been against the consent of the owner of the servient tenement, without his knowledge, or in pursuance of and depending on the license or permission of the owner on each occasion of user. Further, it was necessary that the user should be of such length that a grant could be presumed to have been made, and for this it was held necessary that immemorial user should be shown. In course of time user from the first year of Richard I., and subsequently 20 years' continual user, was held a sufficient period from which it might be presumed that there had been immemorial user, and that at some remote period a grant had been made, though since lost. This last presumption, however, was liable to be rebutted if it were shown that there had been an interruption at any time prior to the commencement of the 20 years, because that would negative immemorial user, and then a grant could not be presumed. This last mode of rebutting presumption of a grant arising from 20 years' enjoyment was abolished by the Prescription Act, and 20 years' continuous enjoyment up to the date of the suit is all that is required by that Act to establish a right of easement. But the enjoyment must still be 'as of right,' as under the common law. The effect of the Prescription Act, on the whole, has been in England to facilitate the acquisition of easements by introducing a fixed and comparatively short term of enjoyment by which they may be acquired, and abolishing one of the defences available in the case of a claim at common law; but a claimant is still at liberty to proceed at common law if it suits him to do so. In India there is no common law on the subject, and since Act IX. of 1871 came into operation the only way in which an easement can apparently be acquired is by the fulfilment of the conditions of § 27 of that Act.

EASEMENT—*contd.*

A claim to an easement is to be distinguished from a claim to damages for disturbance of an existing easement; but if in the latter case the right to the easement is denied, before the plaintiff can recover he must prove incidentally the acquisition of the easement for the disturbance of which he claims damages, and so to do he must apparently fulfil the conditions of § 27 of Act IX. of 1871.

But a claim by a superior riparian proprietor to have the drainage water from his lands flow off in the usual course is not an easement within the meaning of Act IX. of 1871, but a right of property which exists independently of a right of easement, a right *ex jure naturæ*.

A lower reparian proprietor can only justify the obstruction of the flow of the stream, forcing back the water obstructing the drainage of the superior riparian proprietor's land, if he has acquired an easement to do it. In the absence of proof of the acquisition of such a right, such an act is an interference with a right of property of the superior riparian proprietor, and is actionable, whether special damage has accrued or not, because the injury to the right imports a damage; and the right of action continues so long as the obstruction is continued, there being a continual cause of action from day to day. SUBBRAMANIYA AYYAR *v.* RAMACHANDRA RAU. *Innes*, C. J. (Offg.), and *Tarrant*, J. ..... **I. L. Rep. 1 Mad. 335, 1877.**

S. C. under **Limitation. 48.**

4. —— *Artificial Watercourse—Flow of Water.*] In 1860, *R.*, whom the plaintiff now represented, agreed with the Government for a lease of a plot of ground called *D.*, for the purpose of tea-planting, and got possession. In 1864 he opened the channel in dispute for the use of that estate, the channel being in its whole extent an artificial one. It was taken off from a ravine in Government waste land, and passed through land, (which in 1864 belonged to the Government, but now belonged to the defendant) till it reached the *D.* estate. The defendant's estate adjoined the plaintiff's, and the stream after passing through a portion of the plaintiff's estate again passed through a part of the defendant's estate into the plaintiff's, and then again into the defendant's. In 1865, the plaintiff took a lease of the estate from Government for 999 years, to enure a lease from 1860, when the plaintiff obtained possession. The defendant's

Digitized by Google

EASEMENT—*contd.*

title, also derived from Government, dated from 1869. A formal lease was granted in 1874 in similar terms to that of the plaintiff. At the time of the making of this lease, the flow of water through the channel was enjoyed by the plaintiff. In a suit by him to restrain the defendant from interfering with and diverting the flow of water in this channel, and for damages :—

Held by *Innes*, J., that what the plaintiff sought, *viz.*, a right to the uninterrupted flow of water in a permanent artificial stream, and the exclusive right to use the water throughout the length of the stream, was an easement which, if it existed at all, must have come into existence by grant under the lease, or by implication of law arising out of the severance of tenements under the lease. A landlord may, by the contract of letting, convey rights (which though not strictly easements, are in the nature of easements) to enure for the term of the holding. Such easements may be, (1) rights of easements already existing and held by the lessor over the property of neighbouring proprietors, which by his lease he passes for the term of the lease to the lessee,—(2) easements of necessity —and (3) continous and apparent easements which have in fact been used by the owner during the unity of possession for the purpose of that part of the united tenement which corresponds with the tenement conveyed.

The right now claimed, a right in a flowing stream running from the lessor's to and through the lessee's tenement, which existed as a flowing stream prior to the lease, and which was made expressly for the purpose of the tenement leased to *R.*, was undoubtedly a continuous easement requiring no express language to pass it, but which passed by implication of law. As to the extent of the plaintiff's right so passing by implication—if there had existed at the date of the grant any particular purpose for which the water had been and was intended to be used, that user (had and to be had) might be a test of the user granted. But there was at the date of the lease no special purpose to which the water had been applied, and, from the circumstances, a larger right could not be inferred than that *R.* was entitled by the grant to a reasonable use of the water, *i.e.*, to use it and pass it on. The defendant, though he was not entitled to interrupt the flow of the water, was also entitled to use it, as it flowed through his own grounds. Each was entitled to a reasonable use of the flowing water.

EASEMENT—*contd.*

Semble—that the words in the lease—"together with all ways, watercourses, rights, easements, privileges, advantages and appurtenances" were mere words of art inserted in the lease in the place in which such a clause is usually inserted, with the intention of conferring on the lessee such easements *in alieno solo* as might properly attach to the property leased, but without having in contemplation any specific easement upon which the words would operate.

By *Kernan*, J.—The right claimed by the plaintiff was more extensive than he was entitled to. The easement in the use of the channel and flow of water as it existed at the date of the grant or lease, 1865, passed to *R.* and vested in the plaintiff. The easement was apparent, and in its nature continuous, and was in fact created by *R.* before the lease was executed, with the assent of the Government, then and now the owners of the land now occupied by the defendant. Under the circumstances the grantors in the lease of 1865 must be held to have conveyed by implication the easement. And as *R.* was also tenant of the lands before and at the time of the execution of the lease, the lease would carry all rights then in the enjoyment of the lessee.

The defendant by the lease of 1874 took subject to the plaintiff's right in the channel. That right was to have the water flow in the accustomed manner through the defendant's premises, as it did at the time of the execution of the lease of 1865, and that the defendant should be restrained, by injunction, from obstructing and diverting the stream, so as to prevent it from flowing through the defendant's premises to the plaintiff's, in the course and manner in which it used to flow at the date of the lease of 1865.

Semble—that the easement claimed would pass under the general word 'easement' in the lease. MORGAN *v.* KIRBY.....**I. L. Rep. 2 Mad. 46, 1878.**

See **Artificial Watercourse.**

RAMESHUR PERSHAD *v.* KOONJ BEHARRY PATTUCK...**L. Rep. 6 I. A. 33 ; L. Rep. 4 App. Ca. 121 ; I. L. Rep. 4 Cal. 633.**

Digitized by Google

EAVES—Suit to establish Right to cut Projecting.

See **Easement. 2.**

MOHANLAL *v.* AMRATLAL.....**I. L. Rep. 3 Bom. 174.**

EFFECT OF REFERENCE TO COMMISSIONER FOR TAKING ACCOUNTS.

See **Accounts. 2.**

WATSON *v.* AGA MEHEDEE SHERAZEE.....**L. Rep. 1. I. A. 346.**

EDUCATION OUT OF JOINT FUNDS.

See **Hindu Law — Self-Acquired Property.**

PALIEM VALLOO CHETTY *v.* PALIEM SOORYAH CHETTY.....**L. Rep. 4 I. A. 109.**

EJECTMENT.

See **Act XVIII. of 1873, § 7. 1.**

BAKHAT RAM *v.* WAZIR ALI.....**I. L. Rep. 1 All. 448.**

—— Arrears of *Bhaoli* Rent—Decree vitiated by comprising Sum for Compensation for Occupation of Land.

See **Bengal Act VIII. of 1869, §§ 21 and 52.**

KISHEN GOPAUL MAWAR *v.* BARNES...**I. L. Rep. 2 Cal. 374.**

—— From *Chakeran* Lands.

See **Chakeran Lands.**

HURROGOBIN RAHA *v.* RAMRUTNO DEY...**I. L. Rep. 4 Cal. 67.**

—— By one of two Co-Inamdars.

See **Co-Inamdars.**

KRISHNARAV *v.* GOVIND.....**I. L. Rep. 3 Bom. 25, n.**

—— of Cultivating Ryot.

See **Partition Suit.**

SAMINDA PILLAI *v.* SUBBA REDDIAR.....**I. L. Rep. 1 Mad. 333.**

—— Notice to Quit.

See **Ejectment. 1.**

—— of Occupancy Ryot—Suit for Illegal.

See **Bengal Act VIII. of 1869, § 27.**

GOLABOLEE *v.* KOOTOSBOOLAH SIRCAR...**I. L. Rep. 4 Cal. 527.**

—— *Onus Probandi* of Title.

See **Ejectment. 2.**

EJECTMENT—*contd.*

—— Rent-Suit—Right of Prior Purchaser to question Decree for Ejectment if not Party to Suit.

See **Rent-Suit.**

MADHO PROSHAUD *v.* PURSHAN LALL...**I. L. Rep. 4 Cal. 520.**

—— Suit for—not equivalent to Notice to quit.

See **Landlord and Tenant. 1.**

RAJENDRONATH *v.* BASSIDER RUHMAN.....**I. L. Rep. 2 Cal. 146.**

And *see infra*, **1.**

1. —— *Tenant from Year to Year—Reasonable Notice to quit—Criminal Procedure Code, Act X. of* 1872, *§* 530.] A notice to quit running for ten days only is not a sufficiently reasonable notice on which a landlord can maintain a suit in ejectment against a tenant from year to year.

Nor will the suit itself, founded on such a notice, be sufficient notice to quit.

Proceedings under § 530 of the Criminal Procedure Code (Act X. of 1872) in a Criminal Court are not a sufficient demand of possession for the purpose of maintaining an ejectment suit. RAM ROTTON MUNDUL *v.* NETRO KALLY DASSEE. *Jackson* and *Tottenham*, JJ.....**I. L. Rep. 4 Cal. 339, 1878.**

2. —— *Proof of Title—Lease by Lessor out of possession.*] A plaintiff in ejectment must give strict proof of his title. A valid lease cannot be granted by a lessor not in possession of the lands leased, so as to confer on the lessee that which the lessor has not himself, a present right to enter. TIERY *v.* KRISTODHUN BOSE...**L. Rep. 1 I. A. 76, 1873.**

See **Landlord and Tenant. 8.**

SOKINATH GHOSE *v.* JUGOBUNDHOO ROY...**I. L. Rep. 1 Cal. 297.**

ELIGIBILITY FOR OFFICE OF PATIL—Suit for—Declaration of.

See **Pensions Act XXIII. of 1871. 4.**

GURUSHIDGAVDA *v.* RUDRAGADAVDATI.....**I. L. Rep. 1 Bom. 531.**

See **Declaratory Decree. 19, 20.**

NINDAN GAVDA *v.* MALAN GAVDA. **I. L. Rep. 1 Bom. 533, n.**

BABAJI *v.* NANA...**I. L. Rep. 1 Bom. 535.**

Digitized by Google

ELDERSHIP IN PATILKI FAMILY—

Suit for Declaration of Right to.

See **Declaratory Decree. 20.**

BABAJI *v.* NANA...**I. L. Rep. 1 Bom. 535.**

EMANCIPATOR OF SLAVE, HERITABLE RIGHTS OF.

See **Act V. of 1843.**

SAYAD MIR UJMUDIN KHAN *v.* ZIA-UL-NISSA BEGUM...**L. Rep. 6 I. A. 137; I. L. Rep. 3 Bom. 422.**

EMBLEMENTS— *Mortgage— Decree—Sale.*] On 14th July 1876, *B.* obtained a decree against *D.*, directing *D.* to pay the amount advanced upon a mortage of *D.*'s land within six months from the date of the decree, or, in default of payment, the land to be sold, with liberty to *B.* to bid at the sale. Default having been made, the lands were sold on 21st June 1877, and *B.* became the purchaser. At the time of the sale the lands were in the possession of *D.*'s tenants, who were under an agreement to give *D.* a moiety of the crops. On the 11th December, *P.*, another judgment creditor of *D.*, attached the crops on those lands which had been cut and stored by *D.*'s tenants since the date of the sale.

Held, that by the sale to *B.* all the right, title, and interest of *D.*, including his right to the moiety of the crops in the hands of the tenants, passed to *B.*, and no residual right remained in *D.*, on which *P.*'s attachment could operate, the crops not having been carried away and appropriated by *D.* THE LAND MORTGAGE BANK OF INDIA *v.* VISHNU G. PATANKAR. *West* and *Pinhey*, JJ.....**I. L. Rep. 2 Bom. 670, 1670.**

ENCROACHMENT.

See **Riparian Proprietors.**

KALI KISHEN TAGORE *v.* JODOO LAL MULLICK.....**L. Rep. 6 I. A. 191.**

ENDORSEMENT BY JUDGE ON MORTGAGE DEED AT SALE IN EXECUTION OF MORTGAGED PROPERTY.

See **Registration. 4.**

KANAHIA LAL *v.* KALI DIN... **I. L. Rep. 2 All. 392.**

ENDOWMENT.

See **Dewuttur.**

PROSUNNO KUMARI *v.* GOLAB CHAND.... **L. Rep. 2 I. A. 145.**

KOONWAR DOORGANATH *v.* RAM CHUNDER... **L. Rep. 4 I. A. 53; I. L. Rep. 2 Cal. 341.**

See **Hindu Law—Partition. 7.**

RAM COOMAR *v.* JOGENDAR NATH. **I. L Rep. 4 Cal. 56.**

ENGLISH CALENDAR, COMPUTATION OF TIME ACCORDING TO.

See **Bengal Act VIII. of 1869, § 29.**

MAHOMED ELAHEE BAKSH *v.* BROJO KISHORE SEN... **I. L. Rep. 4 Cal. 497.**

ENGLISH DEPARTMENT OF HIGH COURT, POWER OF JUDGE ACTING IN—to transfer Case.

See **Criminal Procedure Code, Act X. of 1872, § 64.**

REG. *v.* ZUHIRUDIN...**I. L. Rep. 1 Cal. 219.**

ENGLISH DOMICILE— Marriage in India between persons with — Succession to Moveable Property.

See **Indian Succession Act X. of 1865, § 4.**

MILLER *v.* ADMINISTRATOR GENERAL OF BENGAL...**I. L. Rep. 1 Cal. 412.**

ENGLISH LAW—Application of—to Parsis.

See **Administration. 2.**

DHANJIBHAI *v.* NAVAZBAI ..**I. L. Rep. 2 Bom. 75.**

——Application of—to Purchase of Lands in India, by Husband and Wife, European British Subjects born and domiciled in India, and married before Act X. of 1865 came into operation.

See **Married Woman's Separate Property. 3.**

BERESFORD *v.* HURST...**I. L. Rep. 1 All. 772.**

—— Of Landlord and Tenant—Application of—to India.

See **Landlord and Tenant. 7.**

TARACHAND *v.* RAM GOBIND...**I. L. Rep. 4 Cal. 778.**

Digitized by Google

ENGLISH LAW—*contd.*

—— As to Onus of Proof of Consideration for a Deed, Application of—to Hindus.
See **Registration. 28.**
RAJU *v.* KRISHNARAV...**I. L. Rep. 2 Bom. 273, 291.**

ENHANCEMENT OF RENT—Arrears—Interest.
See **Interest. 8.**
KHOJAH ASHANOOLLAH *v.* KAJEE AFTABOODDEEN...**I. L. Rep. 4 Cal. 594.**

—— Auction Purchaser—Right of.
See **Bengal Reg. XLIV. of 1793, § 5.**
MOHINY MOHUN *v.* ICHAMOYEE... **I. L. Rep. 4 Cal. 612.**
See **Enhancement of Rent. 1.**

—— Bhaoli Rent.
See **Enhancement of Rent. 4.**

—— By Co-Sharer of Land.
See **Enhancement of Rent. 7.**
See **Co-Sharers of Land. 1.**
DOORGA PROSHAD MYTEE *v.* JOYNARAIN HAZRA...**I. L. Rep. 4 Cal. 96.**
GUNI MAHOMED *v.* MORAN...**Ibid.**

—— of *Ghatwals.*
See **Ghatwali Tenure.**
LEELANUND SINGH *v.* THAKOOR MUNRUNJUN.....**I. L. Rep. 3 Cal. 251.**

—— By *Ijaradar.*
See **Enhancement of Rent. 7.**

—— By *Inamdar.*
See **Enhancement of Rent. 5.**
See **Inamdar.**
PRATAPRAV *v.* BAYAJI...**I. L. Rep. 3 Bom. 141.**

—— By Inamdar—Right of.
See **Miras. 2.**
VISHNUBHAT *v.* BABAJI.....**I. L. Rep. 3 Bom. 345, n.**

—— Notice of—by one of several Joint Landlords.
See **Enhancement of Rent. 9.**
BALAJI *v.* GOPAL.....**I. L. Rep. 3 Bom. 23.**

—— Notice of—Unnecessary when express stipulation in Pottah for Increase of Rental as Lands let, brought under Cultivation.
See **Beng. Act VIII. of 1869, § 14. 2.**
NISTARNI DASI *v.* BONOMALI CHATTERJI..**I. L. Rep. 4 Cal. 941.**

ENHANCEMENT OF RENT—*contd.*

—— Right of *Mulgar* on—to recover from his *Mulgari* Tenants.
See **Mistake.**
BABSHETTI *v.* VENKATARAMANA... **I. L. Rep. 3 Bom. 154.**

—— Service of Notice of—on one Member of Joint Family owning Tenure, sufficient.
See **Bengal Act VIII. of 1869, § 14. 1.**
NOBODEEP CHUNDER SHAHA *v.* SONARAM DASS...**I. L. Rep. 4 Cal. 592.**

1. —— *Right of Auction Purchaser at Sale for Arrears of Revenue to enhance—Act XI. of* 1859, § 37—*Presumption in favour of* Mokurari *Tenures—Beng. Act VIII. of* 1869, §§ 4 *and* 17.] The procedure prescribed in Beng. Act VIII. of 1869 applies to claims of enhancement by a purchaser at a revenue sale, and the rights of any such purchaser are, therefore, subject to all the modifications contained in §§ 4 and 17, which form a presumption in favour of tenures of all classes held at an unchanged rent for a period of 20 years before the commencement of a suit, that such holdings have run on at the same rate from the time of the Permanent Settlement. PURMANUND ASRUM *v.* ROOKINEE GOOPTANI. *Jackson* and *Markby*, JJ...**I. L. Rep. 4 Cal. 793, 1878.**

2. —— *Act X. of* 1859, § 15—*Dependent Talook—Fixed Rent—Reg. VIII. of* 1793, § 51—*Reg. XLIV. of* 1793, § 7.] In a suit brought in the Revenue Court, under Act X. of 1859, to recover rent at an enhanced rate for a dependent talook comprised within the plaintiff's zemindary, after notice of enhancement, grounded on the defendant's possession of an excess of land on a deficient *jumma*, and that the productive power of the land had increased, it appeared that the talook had been created before the decennial settlement, and was held at a fixed rent, which had not been changed from the time of the permanent settlement. It had, however, been decreed in 1821, in a rent suit, that the *jumma* of this talook should be assessed at pergunnah rates; and in 1860, in an enhancement suit, that the plaintiffs were entitled to enhance; but no change in the rate of rent was made by or under either decree:—

Held, that the rent was not liable to enhancement. The grounds stated in the notice, however applicable to ryots having rights of occupancy, were not applicable to a dependent talook creat-

Digitized by Google

ENHANCEMENT OF RENT—*contd.*

ed before the decennial settlement. Talooks of that description are protected by § 51 of Reg. VIII. of 1793 from enhancement, except under the circumstances therein mentioned. See also Reg. XLIV. of 1793, § 7.

To bring the case within § 15 of Act X. of 1859, the defendant's tenure must be otherwise than under a terminable lease, and he must hold at a fixed rent, which has not been altered from the time of the permanent settlement. Section 15 does not render liable to enhancement dependent talookdars, who were exempted by § 51 of Reg. VIII. of 1793, but exempts from enhancement, amongst others, dependent talookdars who, under the provisions of that section, might otherwise be liable to enhancement. A rent may be fixed, though liable under certain conditions to be enhanced. The term "fixed rent" in that section does not mean a rent so permanently fixed that it cannot be enhanced under any circumstances. But there having been no change in the rate of rent made by or under either decree, the decrees of 1821 and 1860 did not put the plaintiffs in a better position than other landlords who, previously to the passing of Act X. of 1859, had a good right to enhance, but whose right, if not exercised from the time of the permanent settlement, was taken away by § 15 of that Act. HURRONATH ROY *v.* GOBIND CHUNDER DUTT...**L. Rep. 2 I. A. 193; 15 Beng. L. R. 120; 23 W. R. 352, 1875.**

3. —— *Suit for—Conversion of Coinage—Special Appeal.*] In a suit for enhancement of rent, it appeared that the rent reserved under a sunnud of A.D. 1775 was 2,599 Azeemabadee rupees, and that in lieu thereof from the time of the permanent settlement the sum of 2,107 Sicca rupees had been paid till the year 1836, when the said Sicca rupees were converted into the statutable equivalent of 2,248 Company's rupees, which were paid from that time down to the commencement of the suit:—

Held, that this amounted to an agreement between the parties from a period antecedent to the permanent settlement that the 2,599 Azeemabadee rupees should be converted into a different coinage, *viz.*, the Sicca rupee, at the rate which had been paid down to 1836, and which in 1836 had been converted into the statutable equivalent in Company's rupees, and there being no right of enhancement under § 15, Act X. of 1859, that rent could not now be changed, even if it could be shown that the calculation under which the 2,599 Azeemabadee rupees were converted into 2,107 Sicca rupees was erroneous. Even if there had been any evidence of error, the High Court could not, on that ground, in special appeal, alter the decree of the Lower Court. MEER MAHOMED HOSSEIN *v.* FORBES... **L. Rep. 2 I. A. 1; 22 W. R. 316, 1874.**

4. —— Bhaoli *Rent—Act X. of 1859, §§ 3 and 4—Act XVIII. of 1873, §§ 5 and 6.*] A rent in kind (*bhaoli*) which, though it varies yearly in amount with the varying amount of the yearly produce, is fixed as to the proportion it is to bear to such produce, is a fixed rent within the meaning of § 3 of Act X. of 1859 (corresponding with § 5 of Act XVIII. of 1873). A tenant, therefore, in a permanently settled district, holding his land at such a rent, is entitled to claim the presumption of law declared in § 4 of Act X. of 1859 (corresponding with § 6 of Act XVIII. of 1873) if he proves that, for a period of twenty years next before the commencement of the suit to enhance his rent, he has paid the same proportion of the produce of his holding.

Hanuman Parshad v. *Ramjug Singh* (H. C. Rep., N. W. P., 1874, p. 371,) dissented from. HANUMAN PARSHAD *v.* KAULESAR PANDEY...**I. L. Rep. 1 All. 301, 1876, F. B.**

5. —— Inamdar—*Permanent Tenant.*] In a suit by an *Inamdar*, holding under a grant from Scindia made in 1793, against his tenant for an enhanced rent, it appeared that at the time of the grant to the plaintiff's ancestor the ancestors of the defendant were in possession of the lands as occupants, and that the rayats of the village possessed and exercised the rights of mortgaging, transferring, and alienating their lands,—that the holdings were hereditary, and that the *Inamdars* had never challenged those rights, or interfered with their exercise,—that the *rayats* had paid rent at one common rate, which had varied at times, but that, whatever it had been, all the tenants paid at the same rate; and that for more than thirty years preceding the suit, the rent had been uniform:—

Held, that it would be difficult to have stronger evidence that the defendant had a proprietary right in his lands, and was not a mere tenant at will; and this being established, the existence of a permanent occupancy in the defendant necessarily involved a limitation of the *Inamdar's* right to enhance the assessment.

Digitized by Google

ENHANCEMENT OF RENT—*contd*

It would be a contradiction in terms to say that a landlord cannot eject a *rayat*, but that he may at his pleasure enhance the assessment to such an amount as would render it impossible for the *rayat* to continue to hold the land.

In every part of India, the Government or its alienee is debarred, if not by law (as in Bengal), yet by the custom of the country, from enhancing the assessment of permanent tenants beyond a certain limit.

As the alienee of Scindia's rights, the plaintiff had, in the absence of law or contract to the contrary, the right to enhance the assessment to the full extent to which, according to the old custom of the country, Scindia would have been entitled to enhance it. There is authority for holding that under the native governments the sovereign's full share was one-half the produce; but without deciding that an *Inamdar* may in all cases enhance the assessment up to the limit of one-half of the produce, the Court, upon the virtual admission of the defendant that the full government share, under the native government, in respect of his lands, was one-half the produce (and the plaintiff being willing to accept such half), *held*, that the plaintiff was entitled to enhance the defendant's assessment to any extent not exceeding one-half of the gross produce. PARSOTAM KESHAVDASS *v.* KALYAN RAVJI. *Melvill* and *Kemball*, JJ.....**I. L. Rep. 3 Bom. 348, 1879.**

See BABAJI, *v.* NARAYEN...**I. L. Rep. 3 Bom. 340.**

And VISHNUBHAT *v.* BABAJI.....**Ibid. 345, n.**

Under **Miras. 2.**

6. —— *Notice of*—Tullubi Bromuttur *Tenure—Beng. Reg. VIII. of* 1793, § 51.] A *tullubi bromuttur* tenure, which has been held as such from the time of the decennial settlement, is such an intermediate tenure as entitles the holder to a notice of enhancement of rent under § 51 of Beng. Reg. VIII. of 1793. NIL MONEY SINGH DEO *v.* CHUNDERKANT BANNERJEE. *Glover* and *Mitter*, JJ...**I. L. Rep. 2 Cal. 125, 1876.**

7. —— *Co-Sharers*—Ijaradar—*Bengal Act VIII. of* 1869, § 18.] An *Ijaradar* is entitled to enhance the rents of ryots holding under him where there is no condition or stipulation in his lease precluding him from so doing.

ENHANCEMENT OF RENT—*contd.*

One of several joint proprietors may, without making his co-proprietors parties, bring a suit for enhancement of rent against ryots holding under him from whom he has been in the habit of realizing separate rents. DOORGA PROSAD MYTEE *v.* JOYNARAIN HAZRA. *Prinsep*, J.....**I. L. Rep. 3 Cal. 474, 1877.**

8. —— *Notice—Beng. Act VIII. of* 1869, § 14—Res judicata.] A lease from generation to generation gave the boundaries of the land leased, estimated the area thereof, and fixed a certain rent per biga. It contained a condition that, if, on measurement the actual quantity of the land should turn out to be either more or less than the estimated area, the rent should be increased or decreased in proportion at the same rate per biga. In a suit for enhancement of rent, on the ground that the land leased contained more than the estimated number of bigas, the lease being one which did not specify the period of the engagement :—

Held, that notice of enhancement was necessary under Beng. Act VIII. of 1869, § 14.

In a previous suit the present plaintiff had sued the defendant for the amount of the rent originally fixed in the lease, and the defendant claimed in that suit to have the rent reduced, in accordance with the terms of the lease, and a measurement was thereupon made, which showed that the quantity of land held by the defendant was in excess of that named in the lease : that suit was decided in favour of the plaintiff for the rent claimed :—

Held, that the measurement adopted by the Court in the former suit was not as regards the amount of the excess, binding on the defendant, and that even if it were, the fact of such measurement and the judgment in the former case would not be sufficient notice of enhancement to the defendant under § 14 of Beng. Act VIII. of 1869. EKRAM MUNDUL *v.* HOLODHUR PAL. *Garth*, C.J., and *Birch*, J....**I. L. Rep. 3 Cal. 271, 1878.**

9. —— *Suit by one of two Joint Khots for Enhanced Rent—Notice.*] One of several tenants in common, joint tenants, or co-parceners, who is not acting by consent of the others as manager of the estate, is not at liberty to enhance rent or eject tenants at his pleasure. In a suit brought by one of two joint *Khots* to recover enhanced rent from a tenant, the notice of enhancement given to the tenant having been

Digitized by Google

ENHANCEMENT OF RENT—*contd.*

signed by the plaintiff alone, and not concurred in by the other joint *Khots*:—*Held*, that the notice was insufficient to render the tenant liable for the increased rent, and that the plaintiff was not entitled to recover. BALAJI BAIKAJI PINGE *v.* GOPAL RAGHU KULI. *Westropp*, C.J. and *Kemball*, J.....**I. L. Rep. 3 Bom. 23, 1878.**

ENHANCEMENT OF SENTENCE—Power of Magistrate to commit on Reference for.

See **Criminal Procedure Code, Act X. of 1872, § 46.**

In the matter of CHINNIMARIGADU...**I. L. Rep. 1 Mad. 289.**

—— *Criminal Procedure Code, Act X. of* 1872, § 2—*Magistrate of First Class.*] A First Class Magistrate in disposing of an appeal from the sentence of a Subordinate Magistrate refrained from enhancing a sentence of fine by awarding imprisonment as an additional punishment, on the ground that the law did not authorize the enhancement of a sentence by awarding a punishment different in kind awarded by the Court whose sentence is appealed from —

Held, that the view of the law taken by the Magistrate was erroneous. Section 280 of Act X. of 1872 authorizes an Appellate Court, subject to the proviso in the final sentence, to enhance any punishment that has been awarded.

Whatever doubt may arise on the word "punishment," as to the power of entirely altering the nature of the punishment, there was no doubt that the Magistrate might have added imprisonment.

As an Appellate Court the First Class Magistrate had power to pass any sentence which the Subordinate Magistrate might have passed. ANON.....**I. L. Rep. 1 Mad. 54, 1876.**

ENTERING A HAVALAT WITH INTENT TO CONVEY FOOD TO A PRISONER.

See **Prisons Act XXVI. of 1870.**

EMPRESS *v.* LALAI...**I. L. Rep. 2 All. 301.**

ENTICING AWAY A MARRIED WOMAN—not Compoundable.

See **Compounding Offences. 4. 7.**

REG. *v.* JETHA.....**I. L. Rep. 1 Bom. 158, n.**

REG. *v.* MUTHAVAN...**I. L. Rep. 1 Mad. 191.**

ENTIRE CARGO—Contract for Sale of.

See **Contract. 1.**

FORBES *v.* TULLOCKCHAND MANOCKCHAND.....**I. L. Rep. 3 Bom. 386.**

ENTRY IN HATCHITTA—Stamp on.

See **Stamp. 5.**

BROJENDER COOMAR *v.* BROMOMOYE CHOWDHRANI...**I. L. Rep. 4 Cal. 885.**

ENTRY OF NAMES OF A KHOT'S TENANTS IN THE REVENUE SURVEY REGISTER AS OCCUPANTS—*Landlord and Tenant—Bombay Act I. of* 1865.] The mere entry of the names of the tenants of a *khot* in the Government register as occupants under the Revenue Survey Act (Bombay) I. of 1865, and the offer which it involves to receive the assessment from the tenants, does not constitute an injury of a tangible kind of which the Courts can take cognizance. In no case can the *khot's* rights as landlord, if they be established, be prejudiced by the proceedings of the revenue officers in carrying out the revenue survey and assessment, there being nothing in the Act (Bombay Act I. of 1865), or the rules framed under it, which gives to the operation of the survey officer, or the Collector acting under it, the effect of changing the rights of subjects of Government *inter se*. If in consequence of being entered as occupants, the tenants pay the assessment direct to Government which the plaintiff would otherwise have to pay, the utmost benefit which, as against him, they can derive from those payments, is a right to deduct them, should their leases allow it, from the rent for which they are answerable. If, being tenants, they should, on the strength of being made occupants for land revenue purposes, deny their landlord's title, he could forthwith sue them, either to establish his title and recover the full rent due to him, or to eject them as holding possession of his lands only by a title which they themselves repudiate. D. R. BAM *v.* THE SURVEY COMMISSIONER AND COLLECTOR OF RATNAGIRI. *West* and *Pinhey*, JJ...**I. L. Rep. 3 Bom. 184, 1878.**

EQUITABLE MORTGAGE.

See **Principal and Surety. 4.**

POGOSE *v.* BANK OF BENGAL...**I. L. Rep. 3 Cal. 174.**

Digitized by Google

EQUITABLE MORTGAGE—*contd.*

—— Assignment of—Registration.

See **Assignment of Mortgage.**

GANPAT *v.* ADARJI...**I. L. Rep. 3 Bom. 312.**

1. —— *Deposit of Title-deeds—Notice.*] Where the plaintiff advanced to the first defendant Rs. 38,000, and had agreed to advance Rs. 27,000 more, the whole Rs. 65,000 to be secured by a mortgage of the first defendant's immoveable property, and the first defendant had deposited with the plaintiff the title-deeds of his immoveable property, for the purpose of enabling him to get a mortgage deed prepared, and had agreed to execute such mortgage deed on the plaintiff paying him the balance of the Rs. 65,000, and the title-deeds were afterwards returned to the first defendant by the plaintiff, to enable him to clear up certain doubts as to his title to some of the premises comprised in the deeds, and such deeds were not subsequently returned to the plaintiff, nor were others deposited in their stead, and the balance of the Rs. 65,000 was not paid by the plaintiff to the first defendant:—

Held, that there was an equitable mortgage to the plaintiff to secure Rs. 38,000, so far as concerned the property comprised in the deeds.

The ground of the rule of equity, that a purchaser of property, though for valuable consideration and taking the legal estate, yet with notice of the prior right of a third person, purchases subject only to the right of which he had so notice, is, that the taking of a legal estate, after notice of a prior right, makes a person a *mala fide* purchaser; there being a kind of fraud on his part in that, knowing that a prior purchaser has the right to the estate, he takes away his right by getting the legal estate.

But a purchaser for valuable consideration without notice of the right of a third person, which renders the act of the vendor, or settlor, in conveying or charging the property, a fraud in contemplation of law, is not an accomplice in that fraud of the vendor or settlor, and Courts of equity will not interfere with the position of advantage which his holding of the legal estate confers upon him, *viz.*, the right to the possession, enjoyment, and disposal of the property; and though subsequently he may become aware of the prior transaction, it is well settled that such a purchaser has the right to convey to one who, at the time of the property being conveyed to him, has notice of the rights of the third person,

EQUITABLE MORTGAGE—*contd.*

and such latter purchaser, though having notice, will be protected by reason of his taking from one who had no notice, for, though himself having notice, he does nothing fraudulent in accepting what his vendor had a right to convey; to hold otherwise, would be seriously to impede, or even wholly to prevent, the *bonâ fide* purchaser for value without notice from disposing of his property at all.

The same ground on which a purchaser with notice is allowed to protect himself by reason of having purchased from one who had none, *viz.*, the securing to the purchaser without notice the full benefit of what he has innocently acquired—must be held to protect a subsequent purchaser, however remote, though having notice. Where, therefore, the second defendant, having notice of the plaintiff's equitable mortgage, purchased from one who, also with such notice, had purchased from a *bonâ fide* purchaser for value without notice:—

Held, that the second defendant held the property free from the equitable mortgage. DAYAL JAIRAZ *v.* JIVRAJ RATANSI. *Green*, J. .....**I. L. Rep. 1 Bom. 237, 1876.**

See RAJU BALU *v.* KRISHNARAO ... **I. L. Rep. 2 Bom. 278-292** as to this last point.

EQUITY OF REDEMPTION.

See **Apportionment of Mortgage Debt.**

HIRDY NARRAIN *v.* SYED ALLA-OOLLAH...**I. L. Rep. 4 Cal. 72.**

—— Purchaser of—before Foreclosure Proceedings, entitled to Notice of Foreclosure — Beng. Reg. XVII. of 1806, § 8.

See **Mortgage. 13.**

NORENDER *v.* DWARKALAL..... **L. Rep. 5 I. A. 18; I. L. Rep. 3 Cal. 397.**

EQUITABLE RELIEF AGAINST EXTORTIONATE BARGAIN.

See the cases under **Unconscionable Bargain.**

ERECTION OF BUILDINGS BY OCCUPANCY RYOT.

See **Bengal Act VIII. of 1869. 1.**

LAL SAHOO *v.* DEO NARAIN SINGH. **I. L. Rep. 3 Cal. 781.**

Digitized by Google

ERECTION OF BUILDING BY TENANT AT WILL, OR FROM YEAR TO YEAR, ON LANDS DEMISED.

See **Landlord and Tenant. 2.**

PROSUNNO COOMAREE *v.* SHEIKH RUTTON...I. L. Rep. 3 Cal. 696.

ERRONEOUS CONSTRUCTION OF DECREE BY THE COURT PRONOUNCING IT.

See **Account. 1.**

HIRJI JINA *v.* NARRAN MULJI...I. L. Rep. 1 Bom. 1.

ERROR IN ACCOUNT.

See **Bond to secure Balance of Account.**

NARAYAN *v.* MOTILAL...I. L. Rep. 1 Bom. 45.

ERROR NOT AFFECTING THE MERITS—Absence of Notice of Action.

See **Act XV. of 1873, §§ 28 and 43.**

MUNICIPAL COMMITTEE OF MORADABAD *v.* CHATRI SINGH...I. L. Rep. 1 All. 269.

—— Non-Joinder of Co-Sharers in Suit for Enhanced Rent.

See **Co-sharers of Land. 4.**

BOYDONATH *v.* GRISH CHUNDER... I. L. Rep. 3 Cal. 26.

—— Non-Joinder of Local Government in Suit against Municipal Committee where Magistrate of District impleaded as representing Local Government.

See **Act XV. of 1873, §§ 28 and 43.**

MUNICIPAL COMMITTEE OF MORADABAD *v.* CHATRI SINGH.....I. L. Rep. 1 All. 269.

—— *Improper Admission in Evidence of Unstamped Document—Appeal—Act VIII. of* 1859, § 350.] Where the Court of first instance, treating an unstamped promissory note, the after-stamping of which was inadmissible, as a bond, received such instrument in evidence, on payment of the stamp duty chargeable on it as a bond, and of the penalty :—

Held, that the reception of the document by the Court was an irregularity, which did not affect the merits of the case, and was no ground

ERROR NOT AFFECTING THE MERITS—*contd.*

for reversing the decree when appealed from. AFZAL-UN-NISSA *v.* TEJ BAN. *Turner*, C.J. (Offg.), and *Spankie*, J...I. L. Rep. 1 All. 725, 1878.

See **Appeal—Civil. 20.**

KHOOB LALL *v.* JUNGLE SINGH... I. L. Rep. 3 Cal. 787.

ERROR IN CALCULATION OF TIME FOR APPEALING NO GROUND FOR ADMITTING TIME-BARRED APPEAL.

See **Time-barred Appeal.**

ZAIBULNISSA BIBI *v.* KULSUM BIBI. I. L. Rep. 1 All. 250.

ERROR IN LAW—Review on Grounds of.

See **Review. 3.**

ELLEN *v.* BASHEER...I. L. Rep. 1 All. 184.

ERROR OF PROCEDURE NOT PREJUDICING THE ACCUSED.

See **Summary Trial.**

EMPRESS *v.* KARAN SINGH...I. L. Rep. 1 All. 680.

ERROR IN STATEMENT OF ACCOUNT.

See **Contract. 5.**

SETT GOKUL DAS *v.* MURLI...I. Rep. 5 I. A. 78; I. L. Rep. 3 Cal. 602.

ESCAPE OF WATER.

See **Maintenance of Bunds.**

RAM LALL *v.* LILL DHARY...I. L. Rep. 3 Cal. 776.

ESCHEAT—*Hindu Law*—Mokurrerree Istimraree Pottah]. *M.*, a Hindu Zemindar, granted an ordinary *mokurrerree istimraree* tenure to his illegitimate daughter, who died during his lifetime, without heirs. After her death, *M.* during his life, and afterwards the widows, who by Hindu law were his heirs, continued to receive the rents reserved from those in possession of the lands, the receipts for such rents being taken in the name of the original grantee. In a suit by one of the widows of *M.*, to recover her share of the estate :—

Held, that though the recognition of the parties in possession by the receipt of rent from them, would make it impossible to treat them as trespassers, and would constitute some kind of tenancy requiring to be determined by notice, yet that circumstance only would not be enough

Digitized by Google

ESCHEAT—*contd.*

to defeat the plaintiff's claim in this suit. But that the plaintiff was not entitled to recover, for, the grantee of the tenure having died without heirs, the Crown, by the general prerogative, was entitled to it subject to the payment of the rent reserved. The *mokurrerree*, though carved out of a zemindary, was an absolute alienable estate, and could not revert to the zemindar; and there is no authority upon which the power of taking by escheat can be attributed to the zemindar. The principles of English feudal law are inapplicable to a Hindu zemindar. Supposing, therefore, that the parties in possession had nothing but their possession to depend upon, the superior title, under which alone they could be ousted, was not in the zemindar or his representatives, but in the Crown. RANEE SONWET KONWAR *v.* MIRZA HIMMUT BAHADOOR...**L. Rep. 3 I. A. 92, 1876; I. L. Rep 1 Cal. 391; 25 W. R. 239.**

ESTATE OF A DECEASED HINDU—Judgment against a person taking Possession of the—Legal Representative.

See **Person taking Possession of the Estate of a Deceased Hindu.**

PROSUNNO CHUNDER *v.* KRISTO CHYTUNNO ...**I. L. Rep. 4 Cal. 342.**

ESTATE OF INHERITANCE—Evidence of.

See **Pollium. 1.**

THE COLLECTOR OF TRICHINOPOLY *v.* LEKKAMANI...**L. Rep. 1 I. A. 282.**

ESTOPPEL.

See cases collected uuder **Res Judicata.**

See **Bond to secure Balance of Account.**

NARRAYAN *v.* MOTILAL ..... **I. L. Rep. 1 Bom. 45.**

See **Mortgage. 22.**

MORAN *v.* MITTU BIBEE.....**I. L. Rep. 2 Cal. 58.**

—— By Acquiescence.

See **Acquiescence. 1.**

UDA BEGAM *v.* IMAM-UD-DIN...**I. L. Rep. 1 All. 82.**

—— Agreement not to Execute a Decree.

See **Estoppel 6.**

ESTOPPEL—*contd.*

—— Attestation of Mortgage Deed by prior Mortgagee.

See **Constructive Fraud.**

SALAMAT ALI *v.* BUDH SINGH...**I. L. Rep. 1 All. 303.**

—— Concealment of Prior Charge.

See **Estoppel. 1.**

—— Mesne Profits and Interest subsequent to decree not provided for therein—Security to pay—pending Appeal.

See **Mesne Profits. 1.**

SADASIVA PILLAI *v.* RAMALINDA PILLAI...**L. Rep. 2 I. A. 219.**

—— Of Mortgagee not giving Notice of his Mortgage at Sale in Execution of a Money Decree (unconnected with his Mortgage) obtained by him.

See **Mortgage. 5.**

TUKARAM *v.* RAMCHANDRA...**I. L. Rep. 1 Bom. 314.**

—— Sale by Mortgagee's Son of Share purchased by him at Execution Sale of Absent Member of Hindu Family, without Disclosing his Father's Mortgage.

See **Mortgage. 4.**

JOSHI *v.* JOSHI...**I. L. Rep. 2 Bom. 650.**

—— Title by.

See **Sale in Execution of Decree. 19.**

ALUKMONEE DABEE *v.* BANEE MADHUB CHUCKERBUTTY...**I. L. Rep. 4 Cal. 677.**

1. —— *Concealment of Prior Charge.*] A person who has represented to an intending purchaser of land that he has not a security over that land, and induced him to buy under that belief, cannot as against such purchaser subsequently attempt to put his security in force.

The Judicial Committee will not disturb the concurrent finding of two Lower Courts on a question of fact. MUNNOO LALL *v.* LALLA CHOONEE LALL...**L. Rep. 1 I. A. 144; 21 W. R. 21, 1873.**

2. —— *Jurisdiction—Refund of Amount levied in Irregular Execution.*] Where a Court, on the application of a decree-holder, made an order for execution, which order was subsequently set aside on the ground that such Court had no jurisdiction to make the order :—*Held*, that

Digitized by Google

ESTOPPEL—*contd.*

the decree-holder, having invoked the jurisdiction of the Court, was estopped from calling in question an order subsequently passed by it, directing him to refund a sum levied under the order for execution. GOVIND VAMAN *v.* SAKHARAM RAMCHUNDRA. *Westropp*, C.J., and *West*, J.....I. L. Rep. 3 Bom. 42, 1878.

S. C. under **Execution of Decree. 5.**

3. ——*Variance between Pleading and Proof.*] *A.* claimed certain property from *B.*, the daughter of *C.*, on the ground that, on the death of *C.*, it had descended to *D.*, as the heir of *C.*, and produced a *Kobala* containing a recital that, on the death of *C.*, who had died childless, it had descended to *D.*:—

Held, that *A.* was not estopped from proving that *C.* had left a son *E.*, who survived him, and that *D.* was entitled to the property as *E.*'s heir, and that *D.*'s heir could give the title to such property. GOUR MONEE DEBEA *v.* KRISHNA CHUNDER SANNYAL. *Jackson* and *Tottenham*, JJ.....I. L. Rep. 4 Cal. 397, 1878.

4. ——*Mortgagor and Mortgagee—Decree against Mortgagor—Right of Way.*] *A.* mortgaged, under a Bengali deed of mortgage,—which contained no conveyance of the lands, but simply a declaration that the lands were liable to be sold in default,—certain lands to B., and subsequently, in the same year, instituted a suit against *C*, to have it declared that *C.* had no right of way over the lands mortgaged to *B.* *B.* was not a party to this suit nor had he any notice of it, nor was there anything to show that *C.* was aware of the mortgage to *B.* when the suit was instituted. No fraud or collusion in bringing or conducting this suit was shown. The suit was dismissed, and *C.* obtained a decree establishing his right of way. *B.* subsequently caused the lands to be sold under his mortgage, and became the purchaser at the auction sale. In a suit by *B.* against *C.* to have it declared that *C.* had no right of way over the lands :—

Held, that a mortgagor in possession does not so far represent the entire estate as to affect the rights of a mortgagee. A mortgagee not in possession is not barred, by a decision affirming a right of way in a suit between a third party and the mortgagor, from suing to declare that there is no such right of way, he having no knowledge of that suit. *B.*, therefore, was not estopped by the previous decision against *A.* from again raising the question of the existence of the right of way

ESTOPPEL—*contd.*

over the lands. *Dooma Sahao* v. *Joonarain Lall* (12 W. Rep. 362) followed. BONOMALEE NAG *v.* KOYLASH CHUNDER DEY. *Markby* and *Prinsep*, JJ.....I. L. Rep. 4 Cal. 692, 1878.

5. —— *Rent Suit—Evidence Act I. of* 1872, § 115.] In 1852 *I. C.* purchased the *darpatni* estate, the subject-matter of the suit. In 1858 he sold it to his wife and son. The rent of this *darpatni* falling into arrears, the plaintiff, in 1865, sued *I. C.* for the rent, but was defeated on *I. C.* contending and proving that he was no longer the plaintiff's tenant, having parted with his interest to his (*I. C.*'s) wife and son. The plaintiff then sued *I. C.*'s wife and son for the rent and obtained a decree, under which the *darpatni* was sold, and the plaintiff himself became the purchaser. On the strength of the title so obtained, the plaintiff sued an *ijaradar* of part of the estate for rent. The defendant contended that *I. C.* was the real owner of the property, and that one *P.* had purchased *I. C.*'s right, title, and interest therein, and had obtained possession through the Court, and that he, the defendant, had paid rent to *P.* *P.* was thereupon made a party defendant to the suit, and contended that *I. C.* had mortgaged the property to him, and that such proceedings had been taken on the mortgage that he was entitled in *I. C.*'s right to the rent of the property as owner :—

Held that, inasmuch as *P.*, the intervening defendant, claimed under *I. C.*, and could take no better title than *I. C.* had himself ; and as *I. C.* had directly induced the plaintiff to believe that he had sold his property absolutely to his wife and son, led him to bring a suit against them for rent, and under the decree obtained in that suit to purchase their interest in the property, it did not lie in the mouth of *I. C.*, or any one claiming under him by a subsequent title, to set up a claim to the rent in suit as against the plaintiff.

Where a man by his words or conduct wilfully induces another to believe in a certain state of facts, and to act in that belief, so as to alter his own previous position, the former is estopped as against the latter from averring a different state of facts as existing at the same time. AUNATH NATH DEB *v.* BISHTU CHUNDER ROY. *Garth*, C. J., and *Tottenham*, J.....I. L. Rep. 4 Cal. 783, 1878.

Digitized by Google

ESTOPPEL—*contd.*

6. —— *Agreement not to execute Decree—Breach of Faith—Deed of Conditional Sale to defeat Rights of Third Person—Disavowal of Trust — Foreclosure* — Ex-Parte *Decree—Limitation.*] The plaintiff sued in 1875 to recover certain immoveable property by cancelment and invalidation of a deed of conditional sale dated the 24th of December 1853, in favour of the defendant. In 1860 the defendant caused notice of foreclosure to be issued on the said deed, and in 1861 obtained an *ex-parte* decree for possession. Subsequently, in the same year, a creditor of the plaintiff obtained a decree against the plaintiff, in execution of which he attached the property in question, but on the intervention of the defendant that attachment was removed. The creditor then sued the plaintiff and defendant to contest the order releasing the property, alleging that the deed of conditional sale was fraudulent and collusive. That suit was dismissed. The plaintiff did not appear to defend it, but the defendant did. The defendant first applied for execution of his *ex-parte* decree of 1861, in the year 1864, and he obtained possession in execution in 1872, notwithstanding the opposition of the plaintiff. The plaintiff then instituted the present suit, alleging that the deed of conditional sale was executed without consideration, and with a view to defeat a probable claim by his son, and that the foreclosure proceedings were collusive, and in prosecution of the same object; and that it was not intended that the property should pass to the defendant, who was a mere trustee for the plaintiff, who had, notwithstanding the deed of conditional sale and proceedings above referred to, remained in possession of the property, until the defendant had fraudulently obtained possession in execution of the decree, and contrary to the terms of an agreement dated the 16th of January 1856, whereby the defendant had agreed that even if the deed of conditional sale should be followed by foreclosure proceedings and a decree, nevertheless the defendant would not attempt to disturb the plaintiff's possession:—

Held, 1st, that the suit was not barred by limitation. No cause of action accrued to the plaintiff until the defendant disavowed the trust and proceeded to obtain possession of the property against the plaintiff's will. The mere proceeding to keep alive the decree of 1861 would not be a disavowal of the trust. The defendant first seriously sought to execute his

ESTOPPEL—*contd.*

decree in 1872, and limitation ought not to be computed from an earlier date than that application; if the suit were to be regarded as a suit not merely for possession, but for a declaration that the deed of conditional sale was not intended to pass the property, and that the decree of 1861 should not operate to injure the plaintiff's right, in which view of the suit, six years was the time prescribed; or if, by rejecting as surplusage the claim for invalidation of the conditional sale deed, the suit be, as it should, a claim for possession, the period of limitation was twelve years, to be computed from the date on which possession was obtained in execution of the decree of 1861; in either view, therefore, the suit was not barred.

2ndly. That in a country where *ismfarsi* transactions are so common, and where they have been so commonly recognized by the Court, it would establish a dangerous precedent to rule that under all circumstances, a party is bound by his deed, and concluded from showing the truth. If the rule of estoppel is to be used to promote justice, the degree of strictness with which it is to be enforced must be proportioned to the degree of care and intelligence which the natives of the country, in practice, bring to bear on their transactions. What is ordinarily known in India as a deed, is an attested agreement, prepared without any competent legal advice, and executed and delivered, by parties who are unaware of any distinction between deeds and agreements. Under these circumstances, justice, equity, and good conscience require no more than that a party to such an instrument should be precluded from contradicting it, to the prejudice of another person, when that other, or the person through whom the other claims, has been induced to alter his position on the faith of the instrument; but where the question arises between parties, or the representatives in interest of parties, who, at the time of the execution of the instrument, were aware of its intention and object, and who have not been induced to alter their position by its execution, justice will be more surely obtained by allowing any party, whether he be plaintiff or defendant, to show the truth. The plaintiff, therefore, was not estopped by the deed of conditional sale, from showing the nature of the transaction.

3rdly. That the dismissal of the creditor's suit, on the defendant's plea, did not estop the plaintiff from questioning the truth of the plea

Digitized by Google

ESTOPPEL—*contd.*

4thly. That the decree of 1861 was no bar to the suit, the question now being whether or not the plaintiff suffered judgment to go by default in that suit, on the understanding that the decree was not to be executed without his consent, or if executed, that the property would be restored to him; a question which could not have been determined in the former suit. But even if the plaintiff was so far bound by the decree, that he could not contend that the defendant was not entitled to possession, yet the plaintiff was entitled to insist on the agreement, and, on the strength of it, to recover possession.

The doctrine, that in *in pari delicto, potior est conditio possidentis*, must not be accepted without qualification. *Bowes* v. *Foster* (27 L. J., N. S., 262) followed. PARAM SINGH *v.* LALJI MAL. *Turner* and *Oldfield*, JJ.....**I. L. Rep. 1 All. 403, 1877**

EVICTION OF PURCHASER AT SALE IN EXECUTION OF DECREE UNDER ACT VIII. OF 1859—Refund of Purchase Money.

See **Civil Procedure Code, Act X. of 1877, § 315.**

MULO....**I. L. Rep. 2 All 299.**

EVIDENCE—Of Accomplices.

See **Evidence 2. 3. 4. 9. 9a. 10. 11. 11a. 12a.**

—— Of Account Books kept by Clerk of Firm —Admissions against Firm, though not regularly kept.

See **Account Books.**

REG. *v.* HANMANTA...**I. L. Rep. 1 Bom. 610.**

—— Of Accused illegally pardoned.

See **Evidence 2. 3.**

—— Of Accused re-arrested pending Appeal from his Acquittal.

See **Evidence. 4.**

—— Of Acts of Ownership.

See **Limitation. 7.**

MOHIMA CHUNDER *v* HURRO LALL. **I. L. Rep. 3 Cal. 768.**

See **Land Tenures in Kanara.**

—— Admissibility in—of *Ex-parte* Decree.

See **Judgment ex-parte. 2.**

And *see* **Res Judicata. 12.**

BIRCHUNDER *v.* HURRISH CHUNDER...**I. L. Rep. 3 Cal. 383.**

EVIDENCE—*contd.*

—— Admissibility in—of Former Judgments and Decrees between same Parties or their Representatives.

See **Evidence. 1.**

—— Admissibility in—of Time-barred Decree.

See **Judgment ex-parte. 2.**

And *see* **Res Judicata. 12.**

BIRCHUNDER *v.* HURRISH CHUNDER...**I. L. Rep. 3 Cal. 383.**

—— Of Admissions.

See **Hindu Law—Partition. 7.**

RAM COOMAR *v.* JOGENDRO NATH.. **I. L. Rep. 4. Cal. 56.**

—— Of Admissions by a Defendant to his Attorney in presence of Plaintiff—admissible.

See **Privileged Communications. 2.**

MEMON HAJEE MAHOMED *v.* MOLVI ABDUL KARIM..... **I. L. Rep. 3 Bom. 91.**

—— Of Assignment or Mortgage, inadmissible where unregistered (and therefore inadmissible) Deed of Assignment exists.

See **Assignment of Mortgage.**

GANPAT *v.* ADARJI...**I. L. Rep. 3 Bom. 312.**

—— Of Confession.

See **Evidence. 8. to 16. 19.**

—— Of Confession to Deputy Commissioner of Police, being also a Magistrate.

See **Evidence. 13.**

—— Confession Induced by Person in Authority—Admissibility of—against Co-Accused.

See **Evidence. 15.**

—— Confession Informally recorded—Evidence to supply Defect.

See **Criminal Procedure Code, Act X. of 1872, § 122. 2.**

EMPRESS *v.* RAMANJIYAR...**I. L. Rep. 2 Mad. 5.**

See **Evidence. 12. 14.**

—— Of Consideration—Suit on Unstamped Promissory Note.

See **Evidence. 4.**

—— Of Contemporaneous Oral Agreement Contradicting Written Contract.

See **Evidence. 19. 20.**

See **Mortgage. 22.**

MORAN *v.* MITTU BIBEE...**I. L. Rep. 2 Cal. 58.**

Digitized by Google

EVIDENCE—*contd.*

—— Of Contemporaneous Oral Agreement to Rescind Registered Contract.

See **Incomplete Contract.**

UMEDMUL *v.* DADA...**I. L. Rep. 2 Bom. 547.**

—— Of Custom.

See the cases under **Custom.**

And *see* **Khojas.**

RAHIMATBAI *v.* HIRBAI.....**I. L. Rep. 3 Bom. 34.**

—— Death—Presumption as to.

See **Evidence. 21.**

—— Depositions taken by British Consul at Zanzibar—Act I. of 1872, § 33.

See **Offence committed in Foreign Territory.**

EMPRESS *v.* DOSSAJI GOOLAM HUSEIN.....**I. L. Rep. 3 Bom. 334.**

—— Discovery of—from Confession by Accused.

See **Evidence. 15.**

—— Documents more than 30 years old—Presumption as to.

See **Evidence. 17.**

—— Of Former Judgments and Decrees.

See **Evidence. 1.**

—— Improper Admission of—Power of High Court on Case reserved or certified, to consider Merits.

See **Evidence. 13.**

See **Power of High Court on Case reserved or certified, to consider the Merits of the Case.**

REG. *v.* PITAMBER JINA.....**I. L. Rep. 2 Bom. 61.**

—— Improper Admission of Unstamped Document in.

See **Error not affecting Merits.**

AFZUL-UN-NISSA *v.* TEJ BAN...**I. L. Rep. 1 All. 725.**

—— Insufficiently Stamped *Hundi*—Admissibility of—on Payment of Penalty.

See **Stamp. 3.**

MOTHOORA MOHUN *v.* PEARY MOHUN...**I. L. Rep. 4 Cal. 259.**

—— Interrogatories.

See **Practice—Civil. 6.**

GOSTO BEHARY *v.* JOHUR LALL...**I. L. Rep. 4 Cal. 836.**

EVIDENCE—*contd.*

—— Of Judge.

See **Evidence. 22.**

EMPRESS *v.* DONNELLY...**I. L. Rep. 2 Cal. 405.**

See **Disqualifying Interest of Judge.**

REG. *v.* BHOLANATH SEN.....**I. L. Rep. 2 Cal. 23.**

—— Letter written "without prejudice"—Inadmissible in.

See **Privileged Communication. 1.**

HOWARD *v.* WILSON...**I. L. Rep. 4 Cal. 231.**

—— Libel—Evidence to show what persons reading—understood.

See **Libel.**

SHEPHERD *v.* TRUSTEES OF PORT OF BOMBAY.....**I. L. Rep. 1. Bom. 477, 480.**

—— Of Long Possession, Strong Element in Proof of Mirasdari Title.

See **Miras. 1.**

BABAJI *v.* NARAYAN...**I. L. Rep. 3 Bom. 340.**

—— Magistrate's Notes of—Affidavits to Supplement on Application to transfer Case to High Court.

See **High Court Criminal Procedure, Act X. of 1875, § 147. 3.**

REG. *v.* HADJEE JEEBUN BUX...**I. L. Rep. 1 Cal. 354.**

—— Misappreciation of—Material Error—Act X. of 1872, § 297—Revision.

See **Criminal Procedure Code, Act X. of 1872, § 297. 1. 3. 4. 8.**

HARDEO...**I. L. Rep. 1 All. 139.**

AUROKIAM...**I. L. Rep. 2 Mad. 38.**

EMPRESS *v.* DONNELLY.....**I. L. Rep. 2 Cal. 405.**

EMPRESS *v.* MURLI...**I. L. Rep. 2 All. 336.**

—— Of Opinions of Members of Caste, to prove Custom.

See **Khojas.**

RAHIMATBAI *v.* HIRBAI.....**I. L. Rep. 3 Bom. 34.**

—— Parol—to show no Consideration for—or different Consideration from that stated in Written Contract.

See **Evidence. 20.**

Digitized by Google

EVIDENCE—*contd.*

—— Parol—of Payment of Bond.
See **Bond to secure Balance of Account.**
NARAYAN *v.* MOTILAL...**I. L. Rep. 1 Bom. 45.**

—— Parol Evidence—of Payment where Receipt inadmissible because unregistered.
See **Registration. 22.**
DALIP SINGH *v.* DURGA PRASAD... **I. L. Rep. 1 All. 442.**

—— Of Partition.
See **Compromise. 2.**
PITAM SINGH *v.* UJAGAR SINGH... **I. L. Rep. 1 All. 651.**

—— Of Partition.
See **Hindu Law—Partition. 5. 6.**
PRAG DAS *v.* HARI KISHEN...**I. L. Rep. 1 All. 503, 504.**
AMBIKA DUTT *v.* SUKHMANI KUAR. **Ibid. 437.**

—— Of Payment—Parol—where Receipt inadmisible because unregistered.
See **Registration. 22.**
DALIP SINGH *v.* DURGA PRASAD... **I. L. Rep. 1 All. 442.**

—— Of Payment of Bond—Parol—Contrary to Stipulation in Bond.
See **Bond to secure Balance of Account.**
NARAYAN *v.* MOTILAL...**I. L. Rep. 1 Bom. 45.**

—— Public Documents.
See **Jamabandi.**

—— Presumption of Death.
See **Evidence. 21.**
PARMESHAR RAI *v.* BISHESHAR SING...**I. L. Rep. 1 All. 53.**

—— Privileged Communications.
See the cases under **Privileged Communications.**

—— Proof—Burden of.
See the cases under **Onus Probandi.**

—— Proof—Proof of Custom.
See the cases under **Custom.**

—— Proof—Proof of Mirasdar's Title.
See **Miras. 1.**
BABAJI *v.* NARAYAN...**I. L. Rep. 3 Bom. 340.**

—— Proof—Proof of Ownership.
See **Onus Probandi. 6.**
RATAN KUAR *v.* JEEVAN SINGH... **I. L. Rep. 1 All. 194.**

EVIDENCE—*contd.*

—— Of Proprietary Right in Land.
See **Enhancement of Rent. 5.**
PARSOTAM *v.* KALYAN...**I. L. Rep. 3 Bom. 348.**
See **Land Tenures in Kanara.**

—— Recording—after Case for defence closed—Power of Magistrate.
See **Practice—Criminal. 1.**
EMPRESS *v.* BALDEO SAHAI...**I. L. Rep. 2 All. 253.**

—— *Res gestæ*—Statements of Accused.
See **Evidence. 7.**

—— Secondary—of Confession defectively recorded.
See **Evidence. 12. 14.**
See **Criminal Procedure Code, Act X. of 1872, § 122. 2.**
EMPRESS *v.* RAMANJIYA.....**I. L. Rep. 2 Mad. 5.**

—— Secondary Evidence of Unregistered Document of which Registration compulsory.
See **Evidence. 18.**

—— Special Appeal—Power of High Court on—to consider the.
See **Contract. 14.**
NANAK RAM *v.* MEHIN LAL...**I. L. Rep. 1 All. 483.**

—— Substance of—Record of—in Appealable Case.
See **Summary Trial.**
EMPRESS *v.* KARAN SINGH...**I. L. Rep. 1 All. 680.**

—— Of Surrounding Circumstances and subsequent Acts of Parties, in construing Deeds.
See **Construction of Sanad. 1.**
RAVJI *v.* DADAJI.....**I. L. Rep. 1 Bom. 523-527.**

—— Taken on Oath illegally administered—Validity of Award founded on.
See **Oaths Act X. of 1873, §§ 8, 10, 13.**
WALI-UL-LA *v.* GHOLAM ALI.....**I. L. Rep. 1 All. 535.**

—— Of Title.
See **Limitation. 7.**
MOHIMA CHUNDER DEY SIRCAR *v.* HURRO LALL SIRCAR...**I. L. Rep. 3 Cal. 768.**

Digitized by Google

—— Of Unregistered Deed to prove Breach of Covenant.

See **Registration. 28.**

RAJU *v.* KRISHNARAV...**I. L. Rep. 2 Bom. 273.**

—— Unregistered Deed of Partition.

See **Evidence. 18.**

—— Unregistered Endorsement on Deed of Sale of House—Returning Deed through Purchaser's Inability to pay.

See **Incomplete Contract.**

UMEDMAL *v.* DAVU...**I. L. Rep. 2 Bom. 547.**

—— Unregistered Receipt to prove Release of Mortgage of Land.

See **Registration. 13. 14. 22.**

MAHADAJI *v.* VYANKAJI...**I. L. Rep. 1 Bom. 197.**

BASAWA *v.* KALKAPA.....**I. L. Rep. 2 Bom. 489.**

DALIP SINGH *v.* DURGA PRASAD... **I. L. Rep. 1 All. 442.**

—— Unregistered Mortgage Deed—to prove loan in Action for Money.

See **Registration. 24.**

MATTONGENEY *v.* RAMNARRAIN... **I. L. Rep. 4 Cal. 83.**

—— Unstamped Document—Improper—Admission of.

See **Error not affecting the Merits.**

AFZAL-UN-NISSA *v.* TEJ BAN...**I. L. Rep. 1 All. 725.**

—— Of User to explain the Meaning of a grant.

See PROSUNNO COOMAR SIRCAR *v.* RAM COOMAR PAROOEY...**I. L. Rep. 4 Cal. 53, 55.**

Under **Right of Fishery in Public Navigable Rivers.**

See **Construction of Sanad. 1.**

RAVJI *v.* DADAJI.....**I. L. Rep. 1 Bom. 523, 527.**

—— Of Value.

See **Evidence. 3.**

1. —— *Former Decrees and Judgments—Evidence Act (I. of 1872), §§ 13, 40, 41, 42, 43.*] Judgments and decrees recognizing rights between parties to a suit, or between persons whom they represent, if not conclusive under the Evidence Act (I. of 1872), as they were before that Act came into force, are yet admissible in evidence under § 13 of that Act, for the purpose of showing that the right has been not only asserted by the claimants, but recognized by the tribunals of the country, and this even if the parties to the former suit be not the same as those in the subsequent suit. Where the parties are the same, or representatives of those in the former suit, such judgments and decrees are evidence so nearly conclusive as, when produced by the party in whose favour they are, to shift the burden of proof from him to his opponent, who, in order to escape from the effect of such judgments and decrees, must show that there has been some subsequent alteration in the rights of the parties.

Semble—Under § 13 of the Civil Procedure Code, (Act X. of 1877) the law is the same now as it was under Act VIII. of 1859 prior to the passing of the Evidence Act (I. of 1872). NARANJI BHIKABHAI *v.* DIPA UMED. *Westropp*, C.J., and *Melvill*, J.....**I. L. Rep. 3 Bom. 3, 1878.**

2. —— *Of an Accused illegally pardoned.*] When an accomplice has received a certificate of pardon, under § 347 of the Criminal Procedure Code, from a Magistrate, on condition of making a full disclosure of all the circumstances within his knowledge, and on the faith of that promise of pardon gives evidence fairly and fully, he ought not to be prosecuted for the offence in connection with which he received the certificate of pardon, though it should turn out that the grant of the pardon by the Magistrate was illegal, under § 347.

Two persons, who, according to their own statements, were accomplices in the thefts for which the accused persons were being tried, were arrested under a warrant of the Magistrate charging them with theft. They received from the Magistrate a pardon purporting to be granted under § 347 of the Criminal Procedure Code, Act X. of 1872, and were examined as witnesses at the trial of the accused, both before the Magistrate, and afterwards before the Session Judge, to whom the case was committed. None of the offences with which the accused were charged before the Session Court, were tried exclusively by the Session Court, and the granting the pardon was therefore illegal. The Session Judge, when he had taken the evidence of the two persons, informed them that their pardon was invalid, and asked

Digitized by Google

EVIDENCE—*contd.*

them if they adhered to the statements they had made, to which they replied in the affirmative.

Held, that their evidence must be rejected as absolutely inadmissible, as the effect of §§ 344, 345 347 of the Criminal Procedure Code is to render it illegal for a Magistrate to convert an accused person into a witness, except when a pardon has been lawfully granted under § 347, and the witnesses, being accused persons, not legally pardoned, could not be examined as witnesses till they had been acquitted, convicted, or discharged. REG. *v.* HANMANTA. *Melvill* and *Kemball*, JJ.....**I. L. Rep. 1 Bom. 610, 1877.**

Followed in EMPRESS *v.* ASHGAR ALI...**I. L. Rep. 2 All. 260.**

Infra, 3.

S. C. under **Criminal Procedure Code, Act X. of 1872, § 452.**

3. —— *Accused illegally pardoned—Criminal Procedure Code, Act X. of* 1872, §§ 344, 347 *—Evidence Act I. of* 1872, § 24*—Confession.*] The appellants, together with one *I.* and four other persons, were sent up by the police to the Magistrate on charges of offences none of which were triable exclusively by the Court of Session. The Magistrate in the course of the inquiry tendered a pardon to *I.*, and examined him as a witness for the prosecution, and eventually committed four of the accused to the Sessions, on charges none of which were exclusively triable by the Court of Session, and notwithstanding an objection to the admission of *I.*'s evidence, he was examined as a witness in the Sessions Court:—

Held, that as none of the accused before the Magistrate were charged with any offence exclusively triable by a Court of Session, and as there was no ground for inferring that *I.* was supposed to have been, directly or indirectly, concerned in, or privy to, any such offence, the offer of a pardon to him, and his examination as a witness, by the Magistrate and Judge, were illegal, and not authorized by § 347 of the Criminal Procedure Code (Act X. of 1872). After the offer to him of a pardon, he was, under the provisions of § 347, detained in custody pending the termination of the trial, and his position, as one under accusation of an offence, was in no way changed when he appeared before the Judge, and could not be altered until he had been discharged, acquitted, or convicted, and with reference to § 345, being an accused person, so long as he was in that position he could not be put on his oath or examined as a witness in the case in which he was accused.

EVIDENCE—*contd.*

Held also, that *I.*'s statement was irrelevant and inadmissible, with reference to § 344 of the Criminal Procedure Code, and § 24 of the Evidence Act I. of 1872. EMPRESS *v.* ASHGAR ALI. *Pearson* and *Oldfield*, JJ...**I. L. Rep. 2 All. 260, 1879.**

4. —— *Arrest pending Appeal—Examination of Respondent as a Witness against another person concerned in the same Offence.*] *K.* and *B.* were accused of being concerned in the same offence, *K.* was first apprehended, and committed for trial by the Magistrate to the Sessions Court, where he was acquitted. The Local Government appealed against his acquittal, and the Magistrate arrested him with a view to his detention in custody until the appeal should be determined. While *K.* was so detained in custody, the Magistrate inquired into the charge against *B.*, who had in the meantime been arrested, and made *K.* a witness for the prosecution, and committed *B.* for trial. *K.*'s evidence was taken on *B.*'s trial:—

Held, by *Stuart*, C.J., that the Magistrate was justified in re-arresting *K.*, and that his evidence was admissible against *B.*

By *Spankie*, J.—It might be that the arrest of *K.* on the same charge after his acquittal by the Sessions Judge was unlawful, as it appeared that the appeal of the Crown had not been admitted when the arrest was made.

But if the Magistrate looked on *K.* as still in the position of an accused person, he should not have made him a witness against *B.* Assuming, however, that the re-apprehension of *K.* was unlawful, and that when he made his statement he was a free man, and that the evidence was admissible, it was not evidence on which much reliance could be placed. EMPRESS *v.* KARIM BAKHSH..... **I. L. Rep. 2 All. 386, 1879.**

5. —— *Of Value—Statements in Will.*] The statement in a will of the value of the testator's property is no evidence thereof.

The acceptance by one brother of a certain sum of money in satisfaction of his own share in 1868, though it might be evidence of the value of the ancestral estate in that year, affords no

Digitized by Google

EVIDENCE—*contd.*

indication of the value of that property in 1876. LAKSHUMAN NAIK *v.* RAMCHANDRA NAIK. *Melvill* and *Kemball*, JJ...**I. L. Rep. 1 Bom. 561, 1876.**

6. —— *Of Consideration—Suit on Unstamped Document—Promissory Note.*] The existence of an unstamped promissory note does not prevent the lender of the money from recovering on the original consideration if the pleadings are properly framed for that purpose. In India, the form of pleading not being material, the plaintiff, in a suit on an unstamped promissory note, is not debarred from giving independent evidence of consideration. GOLAP CHAND MARWAREE *v.* THAKURANI MOHOKOOM KOOAREE. *Jackson* and *Kennedy*, JJ.....**I. L. Rep. 3 Cal. 314 ; 2 Cal. Rep. 412, 1878.**

7. —— *Act I. of* 1872, § 8.—Res gestæ—*Statements by Accused.*] "There is hardly any act that a prisoner could do to which a statement relevant to a crime charged against him could not, by a more or less forced connection, be attached. The Evidence Act does not intend to suggest or sanction such a process, but to make those statements admissible, and those only, which are the essential complement of acts done or refused to be done, so that the act itself, or the omission to act, acquires a special significance as a ground for inference with respect to issues in the case under trial." EMPRESS *v.* RAMA BIRRAPA. *Per West*, J.....**I. L. Rep. 3 Bom. 12, 1878.**

8. —— *Act I. of* 1872, § 25 — *Confession.*] Section 25 of the Indian Evidence Act I. of 1872 does not preclude the counsel for one accused person, on behalf of his client, asking questions to prove a confession made to a police officer by another accused person, who is on trial jointly with him, but it would, under such circumstances, be the duty of the Judge to instruct the jury that such confession is not to be received or treated as evidence against a person making it, but simply as evidence to be considered on behalf of the other. IMPX. *v.* PITAMBER JINA. *Westropp*, C.J., *Sargent* and *Atkinson*, JJ.....**I. L. Rep. 2 Bom. 61, 1877.**

9. —— *Act I. of* 1872, § 30.—*Confession of one Prisoner implicating himself and another, Effect of.*] Under § 30 of the Evidence Act (I. of 1872), the confession of a prisoner which affects himself and some other prisoner charged with the same offence, becomes, when duly

EVIDENCE—*contd.*

proved, admissible in evidence, and as evidence against both prisoners, and must be so dealt with by the Court, but such other prisoner cannot, when it is uncorroborated as against him, be legally convicted on it.

Per Garth, C. J.—The weight which should be attached to such evidence, and the question, whether taken by itself, it is sufficient in point of law to justify a conviction, is a question for the Judge who tries the case. If the confession is corroborated by other evidence, it does not matter whether in proving the case at the trial the confession precedes the other evidence, or the other evidence precedes the confession.

Per Jackson, J. (*McDonnell*, J., concurring.)—Such evidence (*i.e.* the confession) is not sufficient to support the conviction of the other accused, even when corroborated by circumstantial evidence, unless the circumstances constituting corroboration would, if believed to exist, themselves support a conviction.

Per Curiam.—The word "Court" in § 30 of the Evidence Act, means not only the Judge, in a trial by a Judge with a jury, but includes both Judge and jury. EMPRESS *v.* ASHOOTOSH CHUKKERBUTTY.....**I. L. Rep. 4 Cal. 483 ; 3 Cal. Rep. 270, 1878, F. B.**

9a. —— *Act I. of* 1872, § 30—*Co-Accused.*] The test § 30 of the Evidence Act I. of 1872 intended should be applied to a statement of one prisoner proposed to be used in evidence as against another is to see whether it is sufficient by itself to justify the conviction of the person making it of the offence for which he is being jointly tried with the other person or persons against whom it is tendered.

Where the confession made by a person being tried jointly with others did not implicate him to the same extent that it implicated them, and was insufficient by itself to justify his conviction :—

Held, that such confession could not be taken into consideration, under § 30 of the Evidence Act I. of 1872, against such other persons. *Queen* v. *Belat Aly* (10 Beng. L. Rep. 453; 19 W. Rep. 76) followed. EMPRESS *v.* GAURAJ. *Straight*, J.....**I. L. Rep. 2 All. 444, 1879.**

10. —— *Act I. of* 1872, § 30.—*Confession of Co-Accused.*] The conviction of a person jointly tried with other persons for the same offence,

Digitized by Google

EVIDENCE—*contd.*

cannot proceed merely on an uncorroborated statement in the confession of one of his co-accused. EMPRESS *v.* BHAWANI. *Turner*, C. J. (Offg.).....**I. L. Rep. 1 All. 664, 1878.**
EMPRESS *v.* RAM CHUND...**I. L. Rep. 1 All. 675.**

11. —— *Act I. of* 1872, § 30.—*Confession of Co-Accused.*] A conviction based solely on the confession of a co-prisoner is bad in law. REG. *v.* AMBIGARA HULAGU. *Holloway* and *Innes*, JJ... **I. L. Rep. 1 Mad. 163, 1876.**

11a. ——*Accomplice—Corroboration.*] Confessions of co-prisoners, implicating one of the prisoners jointly tried with them for the same offence, cannot be accepted as sufficient corroboration of the testimony of approvers against such other prisoner. A conviction based on the testimony of approvers, uncorroborated, as to the identity of the accused person, cannot be sustained, and the confessions of co-prisoners implicating him cannot be accepted as sufficient corroboration of such testimony. REG. *v.* BUDHU NANU. *Westropp*, C.J., and *N. Harridas*, J.....**I. L. Rep. 1 Bom. 475, 1876.**

12. —— *Criminal Procedure Code*, §§ 122, 346.] A confession recorded under § 122 of the Criminal Procedure Code (Act X. of 1872) must bear both the memorandum of the Magistrate certifying his belief that the confessions were voluntarily made, and his certificate that the examination was taken in his presence and in his hearing, and contains accurately the whole of the statement made by the accused person.

No oral evidence can be received to prove the fact of the confession, if the confession itself be inadmissible in evidence, by reason of the above requisites not having been complied with. *Reg.* v. *Bai Ratan* (10 Bom. H. C. Rep. 166) followed. REG. *v.* SHIVA. *Melvill* and *West*, JJ...**I. L. Rep. 1 Bom. 219, 1876.**

12a. ——*Act I. of* 1872, § 133—*Accomplice—Corroboration.*] Section 133 of the Evidence Act (I. of 1872) in unmistakeable terms lays it down that a conviction is not illegal merely because it proceeds on the uncorroborated testimony of an accomplice, and to hold that corroboration is necessary is to refuse to give effect to this provision.

The rule in § 114 of the Evidence Act I. of 1872 coincides with the rule observed in England,

EVIDENCE—*contd.*

that though the tainted evidence of an accomplice should be carefully scanned and received with caution, and may be treated as unworthy of credit, yet if the jury, or the Court, credits the evidence, a conviction proceeding on it is not illegal. REG. *v.* RAMASAMI PADAYACHI. *Morgan*, C.J., and *Kindersley*, J.....**I. L. Rep. 1 Mad. 394, 1878.**

13. —— *Confession Made to Police Officer also a Magistrate—Admissibility in Evidence of—Evidence Act I. of* 1872, §§ 25, 26, *and* 167—*Deputy Commissioner of Police at Calcutta — Letters Patent*, 1865, § 26.] The prisoner, on his arrest, made a statement in the nature of a confession, in the house of his father, in the presence of two police inspectors and another prisoner. The statement was reduced into writing by one of the inspectors of police, and was afterwards signed and acknowledged in the presence of the Deputy Commissioner of Police, at his private residence over the Police Office, and the Deputy Commissioner signed his name under that of the prisoner as a Magistrate and Justice of the Peace. At the trial of the prisoner at the Criminal Session of the High Court, this statement was tendered in evidence against him, and admitted by the Judge, who overruled an objection on behalf of the prisoner that, under § 25 of the Evidence Act, it was inadmissible. On a certificate granted by the Advocate General under Cl. 26 of the Letters Patent (1865) :—

Held, that the confession was inadmissible in evidence, and ought to have been rejected.

Per Garth, C.J.—Section 26 of the Evidence Act (I. of 1872) is not intended to qualify the 25th section, but means that no confession made by a prisoner in custody, to any person other than a police officer, shall be admissible, unless made in the presence of a Magistrate. Section 25 is an enactment to which the Court should give the fullest effect, and should be construed in its widest and most popular signification. In construing that section, therefore, the term "police officer" should be read, not in any strict technical sense, but according to its more comprehensive and popular meaning, in accordance with which the Deputy Commissioner of Police at Calcutta must be held to be a police officer within the meaning of that section, though he would not be a member of the Police force

Digitized by Google

EVIDENCE—*contd.*

within the meaning of Bengal Act IV. of 1866, and the Police Act of 1861.

Per Curiam.—Section 167 of the Evidence Act applies to criminal as well as civil cases.

Per Garth, C.J. (*Pontifex*, J., doubting.)—The Court mentioned in that section which is to decide on the sufficiency of the evidence to support the conviction, in a case coming before the Court under Cl. 26 of the Letters Patent, is the Court of Review, and not the Court below. That Court must decide upon the case, upon being informed from the Judge's notes, and if necessary by the Judge himself, of the evidence adduced at the trial. (A certificate by a majority of the jury that if the confession had not been in evidence, they would have acquitted the prisoner, was tendered, but rejected by the Court, which eventually upheld the conviction.)

Per Curiam.—Apart from § 167 of the Evidence Act (I. of 1872), the Court has power, under Cl. 26 of the Letters Patent (1865), upon a case reserved or certified, to review the whole case, and to quash or confirm the conviction. REG. *v.* HURRIBOLE CHUNDER GHOSE. *Garth*, C.J., and *Pontifex*, J.,.....**I. L. Rep. 1 Cal. 207, 1876.**

S. C. under **Certificate of Jury.**

See REG. *v.* PITAMBER JINA...**I. L. Rep. 2 Bom. 61.**

Under **Power of High Court on Case Reserved or Certified to consider the Merits of the Case.**

14.—— *Confession Defectively recorded—Act X. of* 1872, §§ 122, 346—*Preliminary Inquiry—Secondary Evidence.*] When the confession of a prisoner taken under § 122 of the Criminal Procedure Code (Act X. of 1872), and not in the course of a preliminary inquiry, was not taken in the manner provided by § 346, *i.e.*, where it did not bear the proper certificate, and was not signed or attested by the prisoner's mark :—

Held, that it was inadmissible in evidence, and that the evidence of the recording officer, that such confession was actually made, was inadmissible to supply the defect. *Reg.* v. *Bai Ratan* (10 Bom. H. C. Rep. 166) followed. EMPRESS *v.* MANNOO TAMOOLEE. *Morris* and *White*, JJ... **I. L. Rep. 4 Cal. 696; 4 Cal. Rep. 137, 1879.**

15. —— *Inducement — Admissibility of Confession against Co-Accused —Discovery of*

EVIDENCE—*contd.*

Evidence—Evidence Act I. of 1872, §§ 24 *to* 27 *and* 30.] *A.*, *B.*, and C. being jointly tried for murder, a confession made by *A.* was tendered in evidence. But the confession having been made under undue influence by a person in authority, the Session Judge rejected it ("as a confession merely") as against the other accused *B.* and *C.*, but took it into consideration against *A.* himself "in relation to facts which have been brought to light in consequence of it, and further in relation to what accused said at the time he pointed out where the murder was committed, and did other acts which prove that his confession in relation to them is true."

Held, that if the confession was admissible at all, it was admissible for the purpose of the Court's taking it into consideration against *B.* and *C.*, as well as affording the strongest evidence against *A.* himself; and that it was an error on the part of the Session Judge to suppose that it could be first entirely rejected as unduly obtained, and then brought in again to convict *A.* If circumstances rendered it wholly or partly admissible, it ought not to have been set aside at all, but weighed for all purposes with care and discretion.

Held, also, that as no discovery of facts through information derived from *A.* had occurred after the confession was made, it ought, having been made under undue influence, to have been wholly rejected even as against *A.* himself. A confession of murder made to a police constable, is not at all confirmed by the prisoner's saying "That is the place where I killed the deceased," and when, starting from the pointing to a ditch or a tree, a long narrative of transactions, some of them altogether remote from any connection with the spot indicated, is allowed to be deposed to as confessed by a prisoner, the intention of the Evidence Act is not fulfilled but defeated. EMPRESS *v.* RAMA BIRAPA. *West* and *Pinhey*, JJ...**I. L. Rep. 3 Bom. 12, 1878.**

S. C. under 7, *supra.*

16. —— *Criminal Procedure Code, Act X. of* 1872, § 346—*Attestation when unnecessary.*] The attestation required by § 346 of the Criminal Procedure Code (Act X. of 1872) is unnecessary when the confession is made in Court to the Magistrate trying the case at the time of trial. In such a case it is unnecessary for the Magistrate to record any "confession," since he is competent on the admission of the accused to

Digitized by Google

EVIDENCE—*contd.*

sentence him without any further record (§ 324, Act X. of 1872). *In the matter of* CHUMMAN SHAH. *Markby* and *Prinsep*, JJ...**I. L. Rep. 8 Cal. 756 ; 2 Cal. Rep. 317, 1878.**

17. —— *Document more than Thirty years old—Presumption as to—Evidence Act I. of* 1872, § 90—*Proof of Execution—Proof of Authority to sign on behalf of others.*] The plaintiff sued the defendants to enhance the rent of certain land. The defendants successfully contended in both the lower Courts that they were protected from enhancement by reason of a *mokurrari* pottah, executed forty-three years before the suit. At the time when the pottah bore date, there were three maliks of the land. The pottah purported to bear the seal of one only of the maliks, and to be signed on behalf of all the maliks by one *S. L.*:—

Held, that although the pottah might be a genuine document, it would not bind the maliks who did not affix their seals, or those who claimed under them, until it was shown that *S. L.* had special authority from the two maliks to sign their names to the pottah, or a general authority to sign on their behalf all documents of the same description as the pottah. Until such proof was given, the pottah was not admissible in evidence. The fact that it was more than 30 years old only gave rise to the presumption mentioned in § 90 of the Evidence Act I. of 1872, namely, that the signature at the foot of the pottah, which purported to be in *S. L.*'s handwriting, was in his handwriting, and that the execution, which on the face of the pottah appeared to be the execution of *S. L.*, was an execution of the pottah by him. To make the pottah evidence against the two maliks who did not execute it, and those claiming under them, the defendants must go further and show that *S. L.* had the authority of those two maliks to sign their names. UBILACK RAI *v.* DALLIAL RAI. *White* and *Mitter*, JJ...**I. L. Rep. 3 Cal. 557, 1878.**

18.——*Act I. of* 1872, § 91—*Partition Deed,—Registration—Secondary Evidence.*] A deed of partition was executed among three brothers, *A.*, *B.* and *C.*, on the 19th March 1867, but was not registered. It recited that the bulk of the family property had been divided some years previously to its date, but that there remained undivided three houses, which three houses, the deed proceeded to state, were on that day (*i.e.*, 19th March 1867) divided among the three brothers *A.*, *B.* and *C.*

EVIDENCE—*contd.*

In a suit brought by *C.*'s widow to recover the house which fell to *C.*'s share :—

Held, that though the deed would not exclude secondary evidence of the partition of the bulk of the family property previously divided, yet it did affect to dispose of the three houses, by way of partition, made on the day of its execution, and therefore, under § 91 of the Evidence Act (1. of 1872), rendered secondary evidence of its contents inadmissible.

A Judge is not at liberty to make a case for a plaintiff totally different from that which the plaintiff himself alleges. KACHUBHAI GULABCHUND *v.* KRISHNABHAI. *Westropp*, C.J., and *Melvill*, J.....**I. L. Rep. 2 Bom. 685, 1878.**

19. —— *Act I. of* 1872, § 92—*Contemporaneous Oral Agreement.*] The plaintiff sued to recover possession of a house, which he alleged that he had purchased under a deed of sale, from the defendants, to whom he had subsequently let the house. The defendants admitted the execution of the deed of sale, but set up a contemporaneous oral agreement with the plaintiff, that the deed of sale was to be merely a security for the payment of a certain sum of money by the defendants to the plaintiff, and alleged that a considerable portion of the money so secured had been repaid by them to the plaintiff.

Held, that the alleged contemporaneous oral agreement being wholly inconsistent with the terms of the deed of sale, oral evidence to prove it was excluded by § 92 of the Evidence Act. BANAPA *v.* SUNDARDAS JAGJIVANDAS. *Westropp*, C.J., and *Kemball*, J...**I. L. Rep. 1 Bom. 333, 1876.**

20. ——*Act I. of* 1872, § 92—*Oral Evidence—Consideration.*] Section 92 of the Evidence Act (I. of 1872) prevents the admission of oral evidence for the purpose of contradicting or varying the terms of a written contract, but does not prevent a party to a contract from showing that there was no consideration, or that the consideration was different from that described in the contract.

Where, therefore, a deed of sale described the consideration to be Rs. 100 in ready cash received, but the evidence showed that the consideration was an old bond for Rs. 63-12-0 and Rs. 36-4-0 in cash ;—*Held*, that there was no real variance between the statement in the deed,

Digitized by Google

EVIDENCE—*contd.*

and the evidence as to consideration, having regard to the fact that it is customary in India, when a bond is given wholly or partially in consideration of an existing debt, to describe the consideration as being "ready money received." HUKUMCHAND *v.* HIRALAL. *Melvill* and *West*, JJ.....**I. L. Rep. 3 Bom 159, 1876.**

21.—— *Act I. of* 1872, § 108—*Presumption of Death—Suit by Reversioner next after a Missing Person to set aside Alienation by Widow—Hindu Law.*] The plaintiffs sued, as being reversioners of *S.* next after *J.* who was missing, to cancel a mortgage made by *S.*'s widow, in so far as the mortgage affected their reversioners' rights, and to have those rights declared. *J.* had not been heard of for eight or nine years:—

Held, that for the purposes of this suit the death of *J.* might be presumed under the provisions of § 108 of the Evidence Act, the plaintiffs not claiming to succeed to *J.*'s property by inheritance, but only seeking, as reversioners next after *J.*, to protect their reversioners' interests.

Semble—In a suit to succeed by inheritance to the property of a missing person, the Hindu and Mahomedan law as to the presumption of death would, having regard to Act VI. of 1871, § 24, apply. Under the Hindu law the property of a missing person will not vest in the next heir until the expiry of at least twelve years from the date of that person's forsaking his family, and being lost sight of, or in the case of a Mahomedan until ninety years had passed from the date of the missing person's birth, supposing that he has not been heard of in the interval. PARMESHAR RAI *v.* BISHESHAR SINGH. **I. L. Rep. 1 All. 53, 1875, F. B.**

22.—— *Judge—Magistrate.*] A Magistrate or Judge cannot himself be a witness in a case in which he is the sole judge of law and fact.

Per Markby, J.—Where in such a case he has given his evidence and convicted the accused, his having so acted makes the conviction bad.

Per Prinsep, J.—The conviction is not thereby rendered absolutely void where the evidence given by such Judge or Magistrate is immaterial, and where if it be put out of consideration, there is evidence which, if believed, would be sufficient for the conviction of the accused

EVIDENCE—*contd.*

EMPRESS *v.* DONNELLY...**I. L. Rep. 2 Cal. 405, 1877.**

S. C. under **Revival of Prosecution. 3.**

And **Criminal Procedure Code, Act X. of 1872, § 297. 4.**

23.—— *Act I. of* 1872, § 26—*Magistrate—Village Munsiff.*] The provisions of § 26 of the Evidence Act (I. of 1872) do not restrict the meaning of the word "Magistrate" to a Magistrate within the meaning of the Criminal Procedure Code (Act X. of 1872). A village Munsiff is, in the Madras Presidency, a Magistrate within the meaning of § 26 of the Evidence Act (I. of 1872). EMPRESS *v.* RAMANJIYYA. *Innes* and *Forbes*, JJ.....**I. L. Rep. 2 Mad. 5, 1878.**

EVIDENCE ACT I. OF 1872—§ 1—Arbitrators—Rule as to Privileged Communications binding on.

See **Privileged Communications. 1.**

HOWARD *v.* WILSON...**I. L. Rep. 4 Cal. 231.**

—— § 8—*Res gestæ*—Statements of Accused.

See **Evidence. 7.**

EMPRESS *v.* RAMA...**I. L. Rep. 3 Bom. 12.**

—— § 13—Former Judgments and Decrees.

See **Evidence. 1.**

NARANJI BHIKABHAI *v.* DIPA UMED. **I. L. Rep. 3 Bom. 3.**

—— §§ 24 to 27.

See **Evidence. 5.**

EMPRESS *v.* ASHGAR...**I. L. Rep. 2 All. 260.**

——Confession—Undue Influence—Person in Authority.

See **Evidence. 15.**

EMPRESS *v.* RAMA BIRAPA...**I. L. Rep. 3 Bom. 12.**

—— §§ 25 and 26—Confession made to Deputy Commissioner of Police.

See **Evidence. 13.**

REG. *v.* HURRIBOLE...**I. L. Rep. 1 Cal. 207.**

—— § 25—Confession of Co-accused Exculpating Co-accused.

See **Evidence. 8.**

IMPX. *v.* PITAMBER.....**I. L. Rep. 2 Bom. 61.**

Digitized by Google

EVIDENCE ACT I. OF 1872—*contd.*

—— § 30—Joint Trial—Confession of one Accused—Undue Influence—Exclusion as to all.

See **Evidence. 15.**

EMPRESS *v.* RAMA BIRAPA...**I. L. Rep. 3 Bom. 12.**

—— § 30—Confession of Co-Accused no Corroboration of Accomplice as against another Accused.

See **Evidence. 9. 9a. 10. 11. 11a.**

—— § 33—Depositions taken by British Consul at Zanzibar.

See **Offence committed in Foreign Territory.**

EMPRESS *v.* DOSSAJI GULAM HUSEIN.....**I. L. Rep. 3 Bom. 334.**

—— § 40—Former Judgments and Decrees.

See **Evidence. 1.**

NARANJI BHIKABHAI *v.* DIPA UMED. **I. L. Rep. 3 Bom. 3.**

—— § 41—Former Judgments and Decrees.

See **Evidence. 1.**

NARANJI BHIKABHAI *v.* DIPA UMED. **I. L. Rep. 3 Bom. 3.**

—— § 42—Former Judgments and Decrees.

See **Evidence. 1.**

NARANJI BHIKABHAI *v.* DIPA UMED. **I. L. Rep. 3 Bom. 3.**

—— § 43—Former Judgments and Decrees.

See **Evidence. 1.**

NARANJI BHIKABHAI *v.* DIPA UMED. **I. L. Rep. 3 Bom. 3.**

—— § 74—Public Document—Jamabandi.

See **Jamabandi.**

TARU PATUR *v.* ABINASH CHUNDER...**I. L. Rep. 4 Cal. 79.**

—— § 90—Presumption as to Documents more than thirty years old—Execution presumed, but not Authority to execute for another.

See **Evidence. 17.**

UBILACK RAI *v.* DALLIAL RAI...**I. L. Rep. 3 Cal. 557.**

—— § 91.

See **Sodi Razinama.**

VENKATESA *v.* SENGODA.....**I. L. Rep. 2 Mad. 117.**

EVIDENCE ACT I. OF 1872—*contd.*

—— § 91—Unregistered Deed of Assignment of Mortgage, requiring Registration—Other Evidence inadmissible to prove Assignment.

See **Assignment of Mortgage.**

GANPAT *v.* ADARJI...**I. L. Rep. 3 Bom. 312.**

—— § 91—Unregistered Partition Deed—Secondary Evidence.

See **Evidence. 18.**

KACHUBHAI *v.* KRISHNABHAI ...**I. L. Rep. 2 Bom. 635.**

—— § 91—Illustration (*e*) — Unregistered Receipt for Money paid in Part Liquidation of Mortgage of Land—Parol Evidence of Payment admissible.

See **Registration. 22.**

DALIP SINGH *v.* DURGA PRASAD... **I. L. Rep. 1 All. 442.**

—— § 92—Accommodation Acceptor.

See **Principal and Surety. 4.**

POGOSE *v.* BANK OF BENGAL...**I. L. Rep. 3 Cal. 174.**

—— § 92—Oral Agreement contradicting Written Contract.

See **Evidence. 19.**

BANAPA *v.* SUNDARDAS.....**I. L. Rep. 1 Bom. 133.**

See **Mortgage. 22.**

MORAN *v.* MITTU BIBEE.....**I. L. Rep. 2 Cal. 58.**

—— Oral Evidence of Consideration.

See **Evidence. 20.**

HUKAMCHAND *v.* HIRALAL... **I. L. Rep. 3 Bom. 159.**

—— § 92, Cl. 4.

See **Incomplete Contract.**

UMEDMAL *v.* DAVU...**I. L. Rep. 2 Bom. 547.**

—— §§ 101, 103, 106.

See **Onus Probandi. 9.**

HEERA LALL *v.* BARIKUNNISSA... **I. L. Rep. 3 Cal. 501.**

—— § 105.

See **Defamation.**

SIBHO PROSAD PANDHA.....**I. L. Rep. 4 Cal. 124.**

Digitized by Google

EVIDENCE ACT I. OF 1872—*contd.*

— § 108.

See **Evidence. 21.**

PARMESHAR *v.* BISHESHAR...**I. L. Rep. 1 All. 53.**

— § 110.

See **Onus Probandi. 6.**

RATAN KUAR *v.* JIWAN SINGH... **I. L. Rep. 1 All. 194.**

— § 113.

See **Cession of Territory.**

DAMODHAR *v.* GANESH...**10 Bom. H. C. Rep. 37; L. Rep. 3 I. A. 102; I. L. Rep. 1 Bom. 367.**

— § 114—Accomplice—Corroboration.

See **Evidence. 12a.**

REG. *v.* RAMASAMI PADAYACHI... **I. L. Rep. 1 Mad. 394.**

— § 115.

See **Estoppel. 5.**

AUNATH NATH *v.* BISHTU CHUNDER...**I. L. Rep. 4 Cal. 783.**

— § 126—Admissions by a Defendant to his Attorney in presence of Plaintiff.

See **Privileged Communication. 2.**

MEMON HAJEE HAROON MAHOMED *v.* MOLVI ABDUL KARIM. **I. L. Rep. 3 Bom. 91.**

— § 133.

See **Evidence. 12a.**

REG. *v.* RAMASAMI...**I. L. Rep. 1 Mad. 394.**

— § 167—Applies to Criminal Cases—Power of High Court on Case reserved or certified, to review whole Case—Letters Patent, Cl. 26.

See **Evidence. 13.**

REG. *v.* HURRIBOLE...**I. L. Rep. 1 Cal. 207.**

See **Power of the High Court on Case reserved or certified, to consider the Merits.**

REG. *v.* PITAMBER...**I. L. Rep. 2 Bom. 61.**

EXCHANGE OF PATTAS AND MUCHALKAS.

See **Madras Act VIII. of 1865, § 4.**

SESHADDI AYYANGAR *v.* SANDANAM...**I. L. Rep. 1 Mad. 146.**

EXCLUSION OF DATE OF ORDER OR DECREE APPEALED AGAINST.

See **Limitation. 68.**

GUJAR *v.* BARVE...**I. L. Rep. 2 Bom. 673.**

EXCLUSION OF DATE OF PRIOR APPLICATION FOR EXECUTION OF DECREE IN COMPUTING PERIOD OF LIMITATION FOR EXECUTION.

See **Limitation. 82.**

DHONESSUR *v.* ROY GOODER.....**I. L. Rep. 2 Cal. 336.**

EXCLUSION OF TIME NECESSARY TO OBTAIN COPY OF JUDGMENT, IN COMPUTING PERIOD OF LIMITATION FOR PETITION FOR LEAVE TO APPEAL TO PRIVY COUNCIL.

See **Limitation. 90.**

JAWAHIR LAL *v.* NARAIN DAS...**I. L. Rep. 1 All. 644.**

EXCLUSION OF TIME OCCUPIED IN SEEKING EXECUTION OF DECREE IN COURT WITHOUT JURISDICTION.

See **Limitation. 40.**

JIWAN SINGH *v.* SARNAM SINGH... **I. L. Rep. 1 All. 97.**

EXCLUSION OF TIME OCCUPIED IN UNSUCCESSFUL ENHANCEMENT SUIT, IN SUIT FOR ARREARS OF RENT AT ADMITTED RATE, NOT ALLOWED.

See **Limitation. 9.**

BROJENDRO *v.* RAKHAL.....**I. L. Rep. 3 Cal. 791.**

EXCLUSION OF TIME OCCUPIED BY UNSUCCESSFUL SUIT FOR KHAS POSSESSION IN SUIT FOR ARREARS OF RENT, NOT ALLOWED.

See **Limitation. 10.**

HURRO PROSHAD *v.* GOPAUL DASS. **I. L. Rep. 3 Cal. 817.**

Digitized by Google

EXCLUSION OF TIME OCCUPIED IN PROSECUTING SUITS IN COURTS WITHOUT JURISDICTION—In Suits under Act XVIII. of 1873.

See **Limitation. 39.**

TIMAL KUARI *v.* ABLAKH RAI... **I. L. Rep. 1 All. 254.**

EXCLUSIVE RIGHT TO FISH IN A PUBLIC RIVER, INFRINGEMENT OF.

See **Criminal Trespass. 3.**

EMPRESS *v.* CHARN NAVIAH.....**I. L. Rep. 2 Cal. 354.**

EXECUTION CREDITOR—Liability of—in Damages for Wrongful Seizure—Loss of Property while under Attachment.

See **Liability of Execution Creditor in Damages for Wrongful Execution.**

GOPAL MAHAD PATIL *v.* GOKALDAS KHIMJI...**I. L. Rep. 3 Bom. 74.**

—— Liability of—to refund Purchase-money to Purchaser at Sale by Sheriff under Writ of *Fieri Facias* on Eviction of Purchaser on Sale being declared Void.

See **Sheriff's Sale. 1. 2. 3.**

DORAB ALLY KHAN *v.* KHAJAH MOHEEOODDEEN...**I. L. Rep. 1 Cal. 55; I. L. Rep. 3 Cal. 806; L. Rep. 5 I. A. 116.**

FRAMJI B. DASTUR *v.* HORMASJI P. FRAMJI.....**I. L. Rep. 2 Bom. 268.**

EXECUTION OF DECREE—Acquiescence in Improper.

See **Execution of Decree. 1.**

—— of Another Court transferred for Execution.

See **Execution of Decree. 12.**

—— of Another Court transferred for Execution—Application for—must be made to Court passing Decree.

See **Execution of Decree. 17.**

—— Appeal by Auction Purchaser.

See **Appeal—Civil. 22. 37.**

GOPAL *v.* DULAR...**I. L. Rep. 2 All. 352.**

KANTHI RAM *v.* BANKEY LAL...**I. L. Rep. 2 All. 396.**

EXECUTION OF DECREE—*contd.*

—— Appeal from Order in.

See **Appeal—Civil. 23. 28.**

MURLI DHAR *v.* PARSOTAM DASS. **I. L. Rep. 2 All. 91.**

UDA BEGAM *v.* IMAM-UD-DIN...**I. L. Rep. 2 All 74.**

See **Civil Procedure Code, Act X. of 1877, § 244.**

DALPATBHAI *v.* AMARSANG...**I. L. Rep. 2 Bom. 553.**

—— Appeal from Order in—passed before Act X. of 1877 came into operation.

See **Appeal—Civil. 9. 26.**

RUNJIT SINGH *v.* MEHERBAN KOER. **I. L. Rep. 3 Cal. 662.**

THAKUR PRASAD *v.* AHSAN ALI... **I. L. Rep. 1 All. 668.**

—— Appeal from Order in—on Specially Registered Bond under Act XX. of 1866.

See **Appeal—Civil. 11. 12.**

BHYRUB CHUNDER *v.* GOLAP COOMARI...**I. L. Rep. 3 Cal. 517.**

RAMANAND *v.* BANK OF BENGAL... **I. L. Rep. 1 All. 377.**

WILAYAT-UN-NISSA *v.* NAJIB-UN-NISSA.....**I. L. Rep. 1 All. 583.**

—— Appeal in—Proceedings commenced before Act X. of 1877—Sale after—Sale set aside.

See **Appeal—Civil. 5.**

CHINTO JOSHI *v.* KRISHNAJI NARAIN.....**I. L. Rep. 3 Bom. 214.**

—— Application for—by Agent of Firm who succeeds Agent in whose name Decree in Firm's favour passed.

See **Execution of Decree. 13.**

—— Application for—made by Mookhtear of Judgment Creditors.

See **Execution of Decree. 2.**

—— Application for Partial Execution—Joint Decree.

See **Limitation. 75.**

RAM AUTAR *v.* AJUDHIA SINGH... **I. L. Rep. 1 All. 231.**

Digitized by Google

EXECUTION OF DECREE—*contd.*

—— Application for—Passed before Act IX. of 1871 came into operation, made after.

See **Limitation. 69. 74. 75. 76. 77. 80. 81. 83. 84. 85. 88. 89.**

—— Application for—by Heir of Decree Holder—Certificate to collect Debts unnecessary.

See **Civil Procedure Code, Act VIII. of 1859, § 208.**

KARAM ALI *v.* HALIMA.....**I. L. Rep. 1 All. 686.**

—— Application for—by Alleged Purchaser of Decree—Refusal of—Appeal.

See **Act XXIII. of 1861, § 11. 1.**

SOBHA BIBEE *v.* MIRZA SAKHAMUT ALI...**I. L. Rep. 3 Cal. 371.**

—— Application for—by Purchaser of Decree—Appeal.

See **Appeal—Civil. 9.**

RUNJIT SINGH *v.* MEHERBAN KOER. **I. L. Rep. 3 Cal. 662.**

—— Application for—is not a "Suit."

See **Limitation. 40.**

JIWAN SINGH *v.* SARNAM SINGH... **I. L. Rep. 1 All. 97.**

—— Application for—Transferred for Execution.

See **Execution of Decree. 12. 17.**

—— Application to Enforce a Decree.

See **Limitation. 89.**

PRABACHARRA *v.* POTANNAH.....**I. L. Rep. 2 Mad. 1.**

—— Application to Enforce or keep in force Decrees or Orders.

See **Limitation. 70. 74. 75. 77. 78. 80. 83. 85.**

See **Execution of Decree. 18.**

—— Application (Informal) to Enforce or keep in force the Decree.

See **Limitation. 80.**

BEHARI LAL *v.* SALIK RAM...**I. L. Rep. 1 All. 675.**

—— Application to Enforce or keep in force the decree—Application under Act VIII. of 1859, § 285.

See **Limitation. 77.**

HUSSAIN BAKSH *v.* MADGE...**I. L. Rep. 1 All. 525.**

EXECUTION OF DECREE—*contd.*

—— Application for Stay of—is not an Application to enforce or keep in force the Decree.

See **Limitation. 78.**

FAKIR MUHAMMAD *v.* GULAM HUSAIN...**I. L. Rep. 1 All. 580.**

—— Application to Transfer Decree to another Court for Execution is an Application to enforce or keep in force Decree.

See **Execution of Decree. 18.**

—— For Arrears of Rent—Limitation.

See **Beng. Act VIII. of 1869, § 58.**

GOLOKEMONEY *v.* MOHESH CHUNDER...**I. L. Rep. 3 Cal. 547.**

—— For Arrears of Rent—Sale of Under-Tenure—Process against other Immoveable Property of Judgment Debtor.

See **Beng. Act VIII. of 1869, § 61.**

HURRISH CHUNDER *v.* COLLECTOR OF JESSORE...**I. L. Rep. 3 Cal. 712.**

—— Assignment of Decree—Cross-Decrees.

See **Execution of Decree. 3.**

—— Attachment and Sale of Bonds.

See **Civil Procedure Code, Act X. of 1877, § 273.**

NARSANGDAS *v.* TULSIRAM...**I. L. Rep. 2 Bom. 558.**

—— Attachment of *Malikana* Rights payable for ever.

See **Execution of Decree. 10.**

—— Attachment and Sale of Money Decree.

See **Civil Procedure Code, Act X. of 1877, § 273.**

SULTAN KUAR *v.* GULZARI LAL... **I. L. Rep. 2 All. 290.**

—— Attachment of Pay of Military Officer.

See **Execution of Decree. 15.**

—— Attachment of Unrecognized Portion of a *Bhag* in a *Bhagdari* or *Narwadari* Village in.

See **Bombay Act V. of 1862.**

RANCHODAS *v.* RANCHODAS...**I. L. Rep. 1 Bom. 581.**

ARDASIR *v.* MUSE...**I. L. Rep. 1 Bom. 601.**

Digitized by Google

EXECUTION OF DECREE—*contd.*

—— Attachment—Will — *Dewutter* — Bequest of Surplus—Inconsistent Condition.

See **Hindu Law—Will. 13.**

ASHUTOSH DUTT *v.* DURGA CHURN. **L. Rep. 6 I. A. 182.**

—— Barred under Act XIV. of 1859—Application for—made after Act IX. of 1871 came into force.

See **Limitation. 89.**

PRABACHARRA *v.* POTANNAH ... **I. L. Rep. 2 Mad. 1.**

—— Bengal Act VIII. of 1869, §§ 59, 60, 66—Sale of Tenure.

See **Execution of Decree. 8.**

—— Breaking open Door of Shop in.

See **Breaking open Doors.**

DAMODAR PARSOTAM *v.* ISHWAR JETHA... **I. L. Rep. 3 Bom. 89.**

—— Breaking open Doors.

See **Housebreaking.**

In the matter of JOTHARAM DAVAY...**I. L. Rep. 2 Mad. 30.**

—— Compromise of Decree—Payment of Instalments accordingly—Subsequent Application for Execution more than three years after Decree.

See **Limitation. 5.**

STOWELL *v.* BILLINGS...**I. L. Rep. 1 All. 350.**

—— Death of Defendant—Order reviving Decree against a Person not the Legal Representative of Deceased—Appeal.

See **Stat. 24 & 25 Vict., C. 104, § 15. 7.**

POGOSE *v.* CATCHICK...**I. L. Rep. 3 Cal. 708.**

In the matter of POGOSE...**I. L. Rep. 3 Cal. 710. n.**

—— Dispossession of Third Person under Sale in.

See **Sale in Execution of Decree. 12.**

HARASATOOLA *v.* BROJONATH GHOSE...**I. L. Rep. 3 Cal. 729.**

—— Duty of Court executing Decree of another Court.

See **Execution of Decree. 15.**

EXECUTION OF DECREE—*contd.*

—— Enforcing Security Bond for Costs against Surety in.

See **Security Bond.**

CHUTTERDHAREE *v.* RAMBELASHEE.....**I. L. Rep. 3 Cal. 318.**

—— *Ex-parte* Decree—Limitation.

See **Limitation. 67.**

PROSONNO CHUNDER *v.* PROSONNO COOMAR...**I. L. Rep. 2 Cal. 123.**

—— Formal Possession of Land given to Decree holder in—Limitation.

See **Limitation. 12. 22.**

KOONJO MOHUN *v.* NOBO COOMAR. **I. L. Rep. 4 Cal. 216.**

UMBICKA CHURN *v.* MADHUR GHOSAL .....**Ibid. 870.**

—— In Force at time of Passing of Act XIV. of 1859—Limitation for.

See **Limitation. 36.**

DELHI & LONDON BANK *v.* ORCHARD.....**L. Rep. 4 I. A. 127; I. L. Rep. 3 Cal. 47.**

—— In Force when Act IX. of 1871 came into operation—Limitation for.

See the cases under **Limitation. 66 to 89.**

—— Injunction to restrain—Court of Co-ordinate Jurisdiction—Erroneous Order of Substitution of Defendants.

See **Injunction. 2.**

DHURONIDHUR SEN *v.* THE AGRA BANK.....**I. L. Rep. 4 Cal. 380.**

—— Interest on Costs cannot be given in—unless decreed.

See **Interest. 9. 10.**

FORESTER *v.* SECRETARY OF STATE. **L. Rep. 4 I. A. 137; I. L. Rep. 3 Cal. 161.**

MAHATAB CHUNDER *v.* RAM LALL. **I. L. Rep. 3 Cal. 351.**

—— Interest on Decree cannot be levied in—where Decree silent as to.

See **Interest. 11.**

SETH GOKULDAS *v.* MURLI.....**L. Rep. 5 I. A. 78; I. L. Rep. 3 Cal. 602.**

Digitized by Google

EXECUTION OF DECREE—*contd.*

—— Irregular—Refund of Amount levied.

See **Execution of Decree. 5.**

See **Estoppel. 2.**

GOVIND *v.* SAKHARAM...**I. L. Rep. 3 Bom. 42.**

—— Irregularity in—not prejudicing Judgment Debtor.

See **Sale in Execution of Decree. 2.**

GHAZI *v.* KADIR BAKSH...**I. L. Rep. 1 All. 212.**

—— Joint Decree—Application for Partial—by one Decree-Holder.

See **Limitation. 75.**

RAM AUTAR *v.* AJUDHIA SINGH... **I. L. Rep. 1 All. 231.**

—— Lands Seized and Sold out of Jurisdiction—Eviction of Purchaser—Right to recover Purchase Money.

See **Sheriff's Sale. 1. 2.**

DORAB ALLY KHAN *v.* ABDUL AZEEZ...**I. L. Rep. 1 Cal. 55; L. Rep. 5 I. A. 116; S. C. I. L. Rep. 3 Cal. 860.**

—— "Last preceding Application."

See **Civil Procedure Code, Act X. of 1877, § 230.**

RAM KISHEN *v.* SEDHU.....**I. L. Rep. 2 All. 275.**

—— Legitimacy, Question of—decided in.

See **Execution of Decree. 9.**

—— Limitation for.

See **Limitation**; see the Index heading **Limitation for Execution of Decree.**

—— Limitation for—Acknowledgment of Time-barred Decree, by Judgment Debtor.

See **Limitation. 43. 44.**

KALLY PROSONNO *v.* HEERA LAL... **I. L. Rep. 2 Cal. 468.**

MUNGOL PRASHAD *v.* SHAMA KANTO...**I. L. Rep. 4 Cal. 708.**

—— Limitation for—Application under § 285, Act VIII. of 1859.

See **Limitation. 77.**

HUSAIN BAKSH *v.* MADGE...**I. L. Rep. 1 All. 525.**

EXECUTION OF DECREE—*contd.*

—— Limitation for—Application by Purchaser at Execution Sale for Possession—Right of, accrues on Date of Certificate, not of Confirmation of Sale.

See **Limitation. 96.**

BASAPA *v.* MARYA...**I. L. Rep. 3 Bom. 433.**

—— Limitation for—"Applying to enforce a Decree"—Application *simpliciter* "to keep the Decree in force."

See **Limitation. 83. 85. 88.**

CHUNDER COOMAR *v.* BHOGOBUTTY. **I. L. Rep. 3 Cal. 235.**

RAM SOONDER *v.* GOPESSUR...**Ibid. 716.**

JAMNADAS *v.* LALITRAM...**I. L. Rep. 2 Bom. 294.**

—— Limitation for—Application to transfer Decree for Execution.

See **Execution of Decree. 18.**

—— Limitation for—Barred under Act XIV. of 1859—Application for—made after Act IX. of 1871 came into force.

See **Limitation. 89.**

PRABACHARRA *v.* POTANNAH...**I. L. Rep. 2 Mad. 1.**

—— Limitation for—Compromise of Decree—Receipt of Instalments out of Court not a Proceeding to keep Decree alive.

See **Limitation. 5.**

STOWELL *v.* BILLINGS...**I. L. Rep. 1 All. 350.**

—— Limitation for—"Date of Applying."

See **Limitation. 78.**

FAKIR MUHAMAD *v.* GHULAM HUSAIN...**I. L. Rep. 1 All. 580.**

—— Limitation for—Exclusion of Time occupied in unsuccessful Attempts to obtain Execution in Court without Jurisdiction.

See **Limitation. 40.**

JIVAN SINGH *v.* SARNAM SINGH... **I. L. Rep. 1 All. 97.**

—— Limitation for—Exclusion of Date of Former Application.

See **Limitation. 82.**

DHONESSUR KOER *v.* ROY GOODER SAHOY.....**I. L. Rep. 2 Cal. 336.**

Digitized by Google

EXECUTION OF DECREE—*contd.*

—— Limitation for — Execution Proceedings struck off the File—Subsequent Application more than three years after previous one, in substance to continue Previous Proceedings.

See **Limitation. 73. 74. 80. 86.**

ISSUREE DASSEE *v.* ABDUL KHALAK.....**I. L. Rep. 415.**

PARAS RAM *v.* GARDNER.....**I. L. Rep. 1 All. 355.**

BEHARI LAL *v.* SALIK RAM...**Ibid. 675.**

HURRONATH *v.* CHUNNI LAL...**I. L. Rep. 4 Cal. 877.**

—— Limitation for—*Ex-parte* Decree—Appeal from Order refusing to set aside.

See **Limitation. 87.**

SHEO PRASAD *v.* ANRUDH SINGH... **I. L. Rep. 2 All. 273.**

—— Limitation for—*Ex-parte* Decree—Notice of Execution not sufficient "Process for enforcing."

See **Limitation. 67.**

PROSONNO C. COONDOO *v.* PROSONNO C. SIKDAR...**I. L. Rep. 2 Cal. 123.**

—— Limitation for—Final Decree of Appellate Court.

See **Limitation. 76.**

IMAM ALI *v.* DASAMUDHI RAM... **I. L. Rep. 1 All. 508.**

—— Limitation for—of High Court in Special Appeal reversing Decrees of Lower Court under which Defendant put into Possession.

See **Limitation. 69.**

UMIASHANKER *v.* CHOTALAL.....**I. L. Rep. 1 Bom. 19.**

See **Limitation. 76.**

IMAM ALI *v.* DASAUNDHI RAM...**I. L. Rep. 1 All. 508.**

—— Limitation for —in Force before Act XIV. of 1859 was passed.

See **Limitation. 36.**

DELHI AND LONDON BANK *v.* ORCHARD...**L. Rep. 4 I. A. 127; I. L. Rep. 3 Cal. 47.**

EXECUTION OF DECREE—*contd.*

——Limitation for—in Force when Act IX. of 1871 came into operation—Proceedings sufficient to bar Limitation *under Act XIV. of* 1859, pending till 30th September 1871—Informal Application on 30th September 1871, more than three years after last preceding Application.

See **Limitation. 70.**

JIBHAI *v.* PARBHU...**I. L. Rep. 1 Bom. 59.**

—— Limitation for—in Force before Act IX. of 1871 came into operation—Substantive and Adjective Law.

See **Limitation. 81. 84.**

PASUPATI *v.* PASUPATI...**I. L. Rep. 1 Mad. 52.**

UNNODA P. ROY *v.* SHEIKH KOORBAN...**I. L. Rep. 3 Cal. 518.**

—— Limitation for—Informal Application to keep in force the Decree.

See **Limitation. 80.**

BEHARI LAL *v.* SALIK RAM...**I. L. Rep. 1 All. 675.**

—— Limitation for—Interruption of Execution Proceedings—Suit against Intervenor—Application for Execution within three years of Decree in such Suit.

See **Limitation. 74.**

PARAS RAM *v.* GARDNER.....**I. L. Rep. 1 All. 355.**

—— Limitation for—Joint Decree—Application for Partial Execution.

See **Limitation. 75.**

RAM AUTAR *v.* AJUDHIA.....**I. L. Rep. 1 All. 231.**

—— Limitation for—Payable by Instalments.

See **Limitation. 71. 71a. 72.**

—— Limitation for—Power of the Court on Presentation of Application for—to consider whether—was barred at date of Previous Application for—notwithstanding Notices issued.

See **Limitation. 84.**

UNNODA PERSHAD *v.* SHEIK KOORBAN...**I. L. Rep. 3 Cal. 518.**

Digitized by Google

EXECUTION OF DECREE—*contd.*

—— Limitation for—on Specially Registered Bond.

See **Appeal—Civil. 12.**

WILAYAT-UN-NISSA *v.* NAJIB-UN-NISSA...**I. L. Rep. 1 All. 583.**

See **Limitation. 79.**

JAI SHANKAR *v.* TETLEY ..**I. L. Rep. 1 All. 586.**

—— Against Member of Undivided Hindu Family.

See **Bombay Act V. of 1862.**

ARDASIR *v.* MUSE...**I. L. Rep. 1. Bom. 601.**

See **Civil Procedure Code, Act VIII. of 1859, § 269.**

KALAPA *v.* VENKATESH...**I. L. Rep. 2 Bom. 676.**

—— Against Member of Undivided Hindu Family—Judgment Debtor's Share in Ancestral Undivided Property may be sold in.

See **Hindu Law — Alienation of Ancestral Property. 1 to 5.**

BHIKAN DAS *v.* PURA...**I. L. Rep. 2 All. 141.**

GIRDHAREE LAL *v.* KANTO LAL... **L. Rep. 1 I. A. 321.**

MUSSUMUT PHOOLBAS KOONWAR *v.* LALLA JOGESHUR SAHOY... **L. Rep. 3 I. A. 7; I. L. Rep. 1 Cal. 226.**

SURAJ BUNSI KOER *v.* SHEO PERSHAD SINGH...**L. Rep. 6 I. A. 88.**

JALLIDAR SINGH *v.* RAM LAL...**I. L. Rep. 4 Cal. 723.**

See **Hindu Law—Liability of Ancestral Property in the hands of the Heirs for the Debts of the Ancestors.**

NARRAYAN *v.* NARSO...**I. L. Rep. 1 Bom. 262.**

See **Hindu Law — Undivided Family. 3. 4. 7. 8.**

DEENDAYAL *v.* JUGDEEP NARAIN... **L. Rep. 4 I. A. 247; I. L. Rep. 3 Cal. 198.**

RAI NARAIN DAS *v.* NOWNIT LAL.. **I. L. Rep. 4 Cal. 809.**

EXECUTION OF DECREE—*contd.*

LACHMI DAI *v.* ASMAN SINGH... **I. L. Rep. 2 Cal. 213,**

BABAJI *v.* VASADEV...**I. L. Rep. 1. Bom. 95.**

See **Sale in Execution of Decree. 10. 15.**

VENKATARAMAYYAN *v.* VENKATASUBBRAMANIA.....**I. L. Rep. 1 Mad. 358.**

VENKATASAMI *v.* KUPPAIYAN..... **Ibid. 354.**

—— Mesne Profits and Interest not provided for in Decree—Act XXIII. of 1861, § 11.

See **Mesne Profits. 1.**

SADASIVA PILLAI *v.* RAMALINGA PILLAI.....**L. Rep. 2 I. A. 219.**

—— Mesne Profits—Possession obtained under Decree reversed on Appeal.

See **Mesne Profits. 2.**

LATI KOOER *v.* SOBADRA KOOER... **I. L. Rep. 3 Cal. 720.**

—— For Mesne Profits.

See **Execution of Decree. 20.**

—— Against a Military Officer.

See **Execution of Decree. 15.**

—— Misdescription of Property in Application for.

See **Lis Pendens. 1.**

LALA KALI PROSAD *v.* BULI SINGH. **I. L. Rep. 4 Cal. 789.**

—— Money Decree—Mortgage—Right of Purchaser at Sale.

See **Sale in Execution of Decree. 4.**

KHUB CHAND *v.* KALIAN DASS..**I. L. Rep. 1 All. 240.**

—— Money paid in Excess through Mistake under.

See **Act XXIII. of 1861, § 11. 2.**

AGRA SAVINGS BANK *v.* SRI RAM MITTER...**I. L. Rep. 1 All. 388.**

—— Money unduly realized in—Recoverable by Application in Execution without separate Suit.

See **Execution of Decree. 6.**

Digitized by Google

EXECUTION OF DECREE—*contd.*

—— On Mortgage—Notice of Proceedings in—to Prior Purchaser of Mortgaged Property

See **Lis Pendens. 1.**

LALA KALI PROSAD *v.* BULI SINGH. **I. L. Rep. 4 Cal. 789.**

—— On Mortgage of Family House—Sale.

See **Hindu Law — Alienation of Ancestral Property. 1.**

BHIKHAM DAS *v.* PURA.....**I. L. Rep. 2 All. 141.**

—— Mortgage of Ancestral Property by Father —Mitakshara Law—Purchasers at Execution Sale with Notice of Co-Sharers' Claims — Effect of Execution Sale on Share of Deceased Judgment Debtor.

See **Hindu Law — Alienation of Ancestral Property. 3.**

SURAJ BUNSI KOER *v.* SHEO PERSHAD SINGH.....**L. Rep. 6. I. A. 88.**

—— Mortgagee in Possession—Ouster of—in Execution of Decree against Mortgagor.

See **Civil Procedure Code, Act X. of 1877, § 332.**

SHAFI-UD-DIN *v.* LOCHAN SINGH **I. L. Rep. 2 All. 94.**

—— Obstruction to Purchaser at Sale in.

See **Sale in Execution of Decree. 12.**

HARASATOOLAH *v.* BROJONATH GHOSE...**I. L. Rep. 3 Cal. 729.**

—— For Partition.

See **Decree for Partition.**

SHEIKH KHOORSHED HOSSEIN *v.* NUBBEE FATIMA...**I. L. Rep. 3 Cal. 551.**

See **Execution of Decree. 11.**

—— Payable by Instalments.

See **Limitation 71. 71a. 72.**

—— For Performance of Specific Act.

See **Civil Procedure Code, Act VIII. of 1859, § 200.**

AJNASI KUAR *v.* SURAJ PRASAD... **I. L. Rep. 1 All. 501.**

EXECUTION OF DECREE—*contd.*

—— Personal Decree against Father—Sale in—of Family Property—Suit by Son for his Share.

See **Sale in Execution of Decree. 10. 15.**

VENKATASAMI NAIK *v.* KUPPAIYAN...**I. L. Rep. 1 Mad. 354.**

VENKATARAMAYYAN *v.* VENKATASUBBRAMANIA...**Ibid. 358.**

—— Personal Decree against a Hindu Widow.

See **Personal Decree against a Hindu Widow.**

BAIJUN DAOBEY *v.* BRIJ BHOOKUN. **L. Rep. 2 I. A. 275; I. L. Rep. 1 Cal. 133.**

—— Postponing Sale in—Fresh Proclamation necessary.

See **Sale in Execution of Decree. 6.**

GOOPEE NATH *v.* ROY LUCHMEPUT...**I. L. Rep. 3 Cal. 542.**

—— Proceedings in—Commenced before Act X. of 1877, governed by Act VIII. of 1859.

See **Appeal—Civil. 5. 26. 28.**

CHITO *v.* KRISHNAJI...**I. L. Rep. 3 Bom. 214.**

THAKUR PRASAD *v.* AHSAN ALI... **I. L. Rep. 1 All. 668.**

UDA BEGUM *v.* IMAM-UD-DIN...**I. L. Rep. 2 All. 47.**

—— Proceeding to Enforce or keep in force a Decree—Compromise and Receipt of Instalments out of Court.

See **Limitation. 5.**

STOWELL *v.* BILLINGS...**I. L. Rep. 1 All. 350.**

—— Proceeding to Enforce or keep in force a Decree—Striking off Execution Case for Default of Prosecution is not.

See **Limitation. 23.**

RAGHU RAM *v.* DANNU LAL...**I. L. Rep. 2 All. 285.**

—— Property in hands of Receiver of High Court.

See **Receiver, Property in hands of.**

HEM CHUNDER CHUNDER *v.* PRANKRISTO CHUNDER.....**I. L. Rep. 1 Cal. 403.**

Digitized by Google

EXECUTION OF DECREE—*contd.*

—— Rateable Distribution of Sale Proceeds.

See **Civil Procedure Code, Act VIII. of 1859, §§ 270, 271.**

HASOON ARRA *v.* JAWADOONISSA... **I. L. Rep. 4 Cal. 29.**

—— Against Representative of Deceased Mahomedan—Right of Purchaser at Sale in.

See **Sale in Execution of Decree. 20.**

HENDRY *v.* MUTTY LALL DHUR... **I. L. Rep. 2 Cal. 395.**

—— Re-sale in.

See **Re-sale in Execution of Decree.**

ANANDRAV *v.* SHEKH BABA...**I. L. Rep. 2 Bom. 562.**

—— Reversal of Sale of Lands sold in—Application to execute Decree.

See **Limitation. 73.**

ISSUREE DASSEE *v.* ABDOOL KHALAK...**I. L. Rep. 4 Cal. 415.**

—— Right of Representative of Deceased Judgment Creditor to continue Execution Proceedings commenced by him—Limitation.

See **Limitation. 95.**

GULABDAS *v.* LAKSHMAN NARHAR. **I. L. Rep. 3 Bom. 221.**

—— Rival Decrees—Decrees of High Court and Privy Council.

See **Execution of Decree. 14.**

—— Sale in.

See the cases under **Sale in Execution of Decree; and Sheriff's Sale.**

—— Sale of Tenure in.

See **Execution of Decree. 8.**

—— Second Appeal from Order in.

See **Appeal—Civil. 28.**

UDA BEGUM *v.* IMAM-UD-DIN...**I. L. Rep. 2 All. 74.**

—— against a Sirdar, against Sirdar's Heir, not being himself a Sirdar.

See **Limitation. 62.**

SAKHARAM *v.* GANESH...**I. L. Rep. 3 Bom. 198.**

And *see* **Execution of Decree. 5.**

See **Appeal—Civil. 22.**

EXECUTION OF DECREE—*contd.*

—— of Small Cause Courts—Mofussil.

See **Execution of Decree. 21. 22. 23.**

—— of Small Cause Court—Presidency Town.

See **Execution of Decree. 24.**

See **Fixtures.**

MITTOO *v.* BRINDABUN.....**I. L. Rep. 4 Cal. 946.**

—— On Specially Registered Agreement under § 53, Act XX. of 1866—Appeal.

See **Appeal—Civil. 7. 11. 12.**

BHYRUB CHUNDER *v.* GOLAP COOMARY.....**I. L. Rep. 3 Cal. 517.**

RAMANAND *v.* BANK OF BENGAL... **I. L. Rep. 1 All. 377.**

WILAYAT-UN-NISSA *v.* WAJIB-UN-NISSA .....**Ibid. 583.**

—— On Specially Registered Bond—Limitation—for.

See **Limitation. 79.**

JAI SHANKAR *v.* TETLEY.....**I. L. Rep. 1 All. 586.**

See **Appeal—Civil. 12.**

WILAYAT-UN-NISSA *v.* WAJIB-UN-NISSA.....**I. L. Rep. 1 All. 583.**

—— On Specially Registered Mortgage Bond.

See **Sale in Execution of Decree. 5.**

AKHE RAM *v.* NAND KISHORE... **I. L. Rep. 1 All. 236.**

—— Stay of—pending Appeal—Sureties.

See **Civil Procedure Code, Act VIII. of 1859, § 338.**

SHIVLAL *v.* APPAJI...**I. L. Rep. 2 Bom. 654.**

—— Stay of—pending Appeal from Order refusing to postpone—Sale in.

See **Stay of Execution.**

HARSHANKER PARSHAD.....**I. L. Rep. 1 All. 178.**

—— Suit for Possession—Decree—Application for Assessm ent of Mesne Profits.

See **Civil Procedure Code, Act VIII. of 1859, § 197.**

DILDAR HOSSEIN *v.* MUJEEDUNNISSA.....**I. L. Rep. 4 Cal. 639.**

Digitized by Google

EXECUTION OF DECREE—*contd.*

—— Transfer of Proceedings in—by District Judge from Subordinate Court.

See **Civil Procedure Code, Act VIII. of 1859, § 6.**

GAYA PRASHAD *v.* BHUP SINGH... **I. L. Rep. 1 All. 180.**

1. —— *Acquiescence.*] Certain property was attached in execution of a decree against the judgment-debtor in 1847. This attachment was set aside on the application of persons claiming the property as their own. These persons were sued, together with the judgment-debtor, by the judgment-creditor, and another decree was passed in 1855, declaring the said property liable to sale in execution of the decree of 1847. The decree of 1855 had been erroneously continued in execution by the representatives of the decree-holder against the heirs of the judgment-debtor, at various times from 1855 down to the 23rd of November 1875, when execution was sought of a balance alleged to be still due under the decree of 1855:—

Held, that the decree not being against the defendants or their ancestor, but only a decree declaring the liability of the property to sale, the balance could not be realized under that decree, nor could the balance due under the decree of 1847 be realized under the decree of 1855. The balance due under the decree of 1847 could only be recovered in execution of that decree, and it was no answer to the objection that the judgment-creditors had on previous occasions taken out execution in the same way without opposition on the part of the judgment-debtors. BINDA PRASAD *v.* AHMAD ALI *Spankie* and *Oldfield*, JJ...**I. L. Rep. 1 All. 368, 1877.**

2. —— *Application by Mooktear on behalf of Judgment-Creditors — Act VIII. of 1859, § 207.*] An application for execution of a decree on behalf of all the judgment-creditors was presented in Court by a Mooktear, who had signed the names of all the execution-creditors except one, who had signed his own name:—

Held, that though objection might have been taken to the form of the application at the time it was presented, yet, having been once accepted by the Court, it was substantially an application on behalf of all the judgment-creditors sufficient to prevent the operation of the law of limitation. ANTO MISREE *v.* BIDHOOMOOKHEE DABEE. *Jackson* and *Tottenham*, JJ.....**I. L. Rep. 4 Cal. 605, 1878.**

3. —— *Assignment of Decree—Cross-Decrees—Act X. of 1877, § 246.*] *S.* and two other persons held a decree for costs against *M.*, which did not specify the separate interests of each in the decree, and *M.* held a decree for money against *S.* alone. *S.* assigned the decree to the respondents, who applied for its execution as transferees. *M.* sought to treat his decree against *S.* as a cross-decree under § 246 of Act X. of 1877:—*Held*, that the decree purchased by the respondents was not a decree between the same parties as the parties to the decree held by *M.*,—in the latter *S.* was the sole judgment-debtor;—and that *M.*'s decree could not, therefore, be treated as a cross-decree under that section. MURLI DHAR *v.* PURSOTAM DAS. *Pearson* and *Turner*, JJ...**I. L. Rep. 2 All. 91, 1878.**

S. C. under **Appeal—Civil. 23.**

4. —— *Limitation—Deposit of Money and Jewels as Security for Stay of Execution.*] On an application to an Appellate Court for stay of execution of a decree, under which an order for sale of certain property had been made, money and jewels of value sufficient to satisfy the decree were deposited in Court, in lieu of security for the satisfaction of the decree, in the event of the judgment of the Appellate Court being adverse to the judgment-debtor. The order of the Lower Court directing the sale was afterwards confirmed by the Appellate Court.

More than three years after this last-mentioned order, and more than three years after any proceedings had been taken to execute the original decree, the securities applied to the Appellate Court for a return of the deposit, on the ground that the execution of the decree had become barred, and that the judgment-creditor could no longer demand a transfer to him of the deposit. The Court of first instance rejected the application, but the lower Appellate Court reversed this order on the ground that the execution of the decree was barred by limitation.

Held, that no question of limitation arose; if the money and property deposited was sufficient for the satisfaction of the decree, it was not necessary to take any further proceeding in execution. So far as the money was concerned,

Digitized by Google

EXECUTION OF DECREE—*contd.*

when the appeal was dismissed it must be taken to have been transferred to the credit of the decree-holder, and the Court should deal similarly with the jewels pledged, converting them into cash for his benefit. SHEO GHOLAM SAHOO *v.* RAHUT HOSSEIN. *Ainslie* and *McDonnell*, JJ... **I. L. Rep. 4 Cal. 6; 2 Cal. Rep. 206, 1878.**

5. —— *Against Sirdar's Heir who is not a Sirdar — Jurisdiction — Estoppel — Refund of Amount levied in Irregular Execution.*] The mode of enforcing against a Sirdar's heir (who is not himself a Sirdar) a decree passed by the Agent's Court against that Sirdar, is by a suit, and not execution process founded on such decree.

Where a Court on the application of a decree-holder made an order for execution, which order was set aside on appeal, on the ground that such Court had no jurisdiction to make such order:—

Held, that the decree-holder, having invoked the jurisdiction of the Court, was estopped from calling in question an order subsequently made by it directing him to refund the money realized under the order for execution. GOVIND VAMAN *v.* SAKHARAM RAMCHANDRA. *Westropp*, C.J., and *West*, J.....**I. L. Rep. 3 Bom. 42, 1878.**

S. C. under **Estoppel. 2.**

6. ——*Money unduly realised in—Recovery of —Separate Suit—Act X. of* 1877, § 244.] Moneys realized as due under a decree, if unduly realized, are recoverable by the judgment-debtor by application to the Court executing the decree, and not by separate suit. The opinion of *Stuart*, C.J., in *The Agra Savings Bank* v. *Sri Ram Mitter* (I. L. Rep. 1 All. 388) differed from. PARTAB SINGH *v.* BENI RAM...*Turner*, C.J. (Offg.), *Pearson* and *Oldfield*, JJ.....**I. L. Rep. 2 All. 61, 1878.**

7. —— *Act VIII. of* 1859, § 270, *and Act X. of* 1877, § 295—*Change of Law pending Execution of Decree—Prior and subsequent Attaching Creditors—Act I. of* 1868, § 6.] A judgment-creditor in execution of his decree attached certain property belonging to his judgment-debtor while Act VIII. of 1859 was in force. This property was ultimately sold on the 9th January 1879, after Act X. of 1877 came into force. Two days before the sale another judgment-creditor applied to have his decree satisfied out of the same property by a rateable distribution of the proceeds which might be realized.

EXECUTION OF DECREE—*contd.*

Held, that the prior attaching creditor, by his attachment under Act VIII. of 1859, acquired, under § 270 of that Act, a right to have his decree first satisfied in full, and that he was not deprived of this right by the change in the law (Act I. of 1868, § 6). NARANDAS *v.* BAI MANCHHA. *Melvill* and *Kemball*, JJ.....**I. L. Rep. 3 Bom. 217, 1879.**

8. —— *Sale of Right, Title, and Interest— Act VIII. of* 1859—*Act VIII. of* 1869 (*Bengal*) §§ 59, 60, 66.] In attaching the property of a judgment-debtor, whether in an under-tenure, or in an ordinary leasehold interest, under Act VIII. of 1859, only the right, title, and interest of the judgment-debtor can be attached and sold; but if a tenure be sold under § 59 of Bengal Act VIII. of 1869, the purchaser by virtue of § 66 of that Act acquires it, under the provisions of §§ 59 and 60 of the Act, free from all encumbrances which may have accrued thereon by any act of the holder of the under-tenure, his representatives or assigns, unless the right of making such encumbrances shall have been expressly vested in the holder by the written engagement. DOOLAR CHAND SAHOO *v.* LALLA CHABEEL CHAND...**L. Rep. 6 I. A. 47; 3 Cal. Rep. 561, 1878.**

9. —— *Jurisdiction — Act VIII. of* 1859, § 208—*Act XXIII. of* 1861, § 11—*Parties to Suit—Question of Legitimacy.*] The widow of a decree-holder was substituted under § 103 of Act VIII. of 1859 for the purpose of prosecuting an appeal to the High Court. The appeal was prosecuted, and, pending an appeal to the Privy Council from the decree passed by the High Court, the widow applied for execution on behalf of herself and as guardian of her infant son, whose legitimacy was disputed, and eventually decided in the execution proceedings, and obtained a declaration of right to execute the whole of the decree in her two capacities, partly for herself and partly in her capacity of guardian of her son:—

In a suit by the widow of the judgment-debtor to set aside this judgment on the ground—(1) that in an execution proceeding it was not competent to the Court to entertain the question of legitimacy; and (2) on the merits:—

Held, that the issue of legitimacy was not *res judicata* by a competent Court in a competent proceeding.

The infant son was not a transferee of the decree within the terms of § 208 of Act VIII. of

Digitized by Google

EXECUTION OF DECREE—*contd.*

1859, and that section was not intended to apply to cases where a serious contest arose with respect to the rights of persons to an equitable interest in a decree. It was not intended to enable them to try an important question such as the legitimacy or illegitimacy of an heir.

Semble, even if it did apply, there being no appeal from the judgment passed under it, a suit would lie for the purpose of reversing an order made in pursuance of it.

Nor did § 11 of Act XXIII. of 1861 apply; there must be two conditions to give the Court jurisdiction under that section,—the question must be between parties to the suit, and must relate to the execution of the decree. But the infant son was in no proper sense a party to the suit in which the decree had been passed. He was not on the record when the judgment was given, nor when the decree was made. And though he subsequently applied for execution of the decree, that did not constitute him a party to the suit. ABEEDOONISSA KHATOON *v.* AMEEROONISSA KHATOON...**L. Rep. 4 I. A. 66, 1876; I. L. Rep. 2 Cal. 327.**

10. —— *Attachment of* Malikana *Rights payable for ever—Act VIII. of* 1859, §§ 235, 236, 237.] *A.* and *B.* were entitled to receive annually and for ever a specified amount by way of *Malikana* rights from the Collector as compensation for their extinguished rights in *lakheraj* lands. In execution of a decree, *C.*, on the 13th of September, purported to attach, under § 237 of Act VIII. of 1859, *A.*'s share in such specified amount. Subsequent to this attachment, *viz.*, on the 23rd of September, *A.* and *B.* mortgaged their rights to the plaintiff. In a suit brought by him against *A.*, *B.*, and *C*:—

Held, that attachment under § 237 was inapplicable to a right to receive money for ever; that such an attachment is only good so far as it relates to any specific amount, which may be set forth in the request to the officer in whose hands the moneys are, as being then payable, or likely to become payable; and that the attachment in question was therefore invalid.

Semble—The attaching creditor should have proceeded under § 235 or § 236. In either of such cases the defendant, the person to whom the money was payable, would be entitled to notice that he was not at liberty to alienate his rights. NILKUNTO DEY *v.* HURRO SOONDERY DOSSEE. *Jackson* and *Cunningham*, JJ...**I. L. Rep. 3 Cal. 414; 1 Cal. Rep. 412, 1878.**

EXECUTION OF DECREE—*contd.*

11. —— *Decree for Partition—Partition of a* Poojah Dalan—*Consent of Coparceners—Modification of Execution Order by Courts.*] A decree for partition directed the partition of a family dwelling-house with its appurtenances, including a *poojah dalan* with a courtyard adjoining it. At the request of two out of three coparceners, the Civil Court Ameen did not partition the *poojah dalan* and courtyard. To this the third coparcener objected, but her objection was overruled by the Lower Courts, and it was directed that the property in question should remain undivided:—

Held, per White, J., that having regard to the form of the decree, it was not open to the Court in executing that decree, to order that any part of the property should remain joint, unless it was with the consent of all three coparceners who were parties to the suit. But considering the nature of the property, and the fact that some of the coparceners desired that it should still continue undivided and be used as theretofore in its present condition, the Court was not prepared to direct that it should be divided among the three coparceners in proportion to their shares, without giving the coparcener or coparceners who wished to keep it entire an opportunity for doing so, by buying the interest of the coparcener or coparceners who did not wish to keep it undivided, if such latter coparcener or coparceners would agree to sell the same. *Mitter*, J., concurred in the order, and said, "I desire to add that I would put it, not on the ground that the Lower Courts are precluded by the decree from dealing with this property in the mode in which they have done, but on the ground that the order which we have passed is more equitable." RAJCOOMAREE DASSEE *v.* GOPAL CHUNDER BOSE.....**I. L. Rep. 3 Cal. 514, 1878.**

12. —— *Transfer of Decree — Jurisdiction —Striking Case off the File—Act VIII. of* 1859, §§ 285, 286.] The jurisdiction of the Court to which a decree has been transferred for execution is limited strictly to carrying out such execution. Such Court has no power to issue a certificate under §§ 285 and 286 of Act VIII. of 1859, transferring the decree, already transferred to it, to another Court for execution. The Court to which a decree has been properly transferred for execution having struck the case off the file, a subsequent application for a further transfer of the case to another Court for execution, should

Digitized by Google

EXECUTION OF DECREE—*contd.*

be made to the Court which originally passed the decree sought to be executed. SHIB NARAIN SHAHA *v.* BEPIN BEHARY BISWAS. *Kemp* and *Morris*, JJ...**I. L. Rep. 3 Cal. 512; 1 Cal. Rep. 359, 1878.**

See 17, *infra.*

13. —— *Decree passed in Name of Agent of Firm—Application for Execution made by Agent succeeding Agent named in Decree—Limitation.*] A decree was passed in favour of a firm, in the name of the agent of the firm. The second and subsequent applications for execution of this decree were made by an agent of the firm who had succeeded the agent named in the decree. Certain persons, alleging that they were the proprietors of the firm, applied for execution of the decree. The application was refused, on the ground that the proceedings in execution taken by the last-mentioned agent were invalid, and that execution of the decree was therefore barred by limitation.

Held, that such proceedings, however irregular, were not invalid. LACHMAN BIBI *v.* PATNI RAM. *Pearson* and *Turner*, JJ...**I. L. Rep. 1 All. 510, 1877.**

14.——*Rival Decrees—Decree of High Court and of Privy Council.*] On appeal by *U.* the High Court set aside a decree which the sons of *K.* had obtained in the Court of first instance against *U.* and other persons, in a suit brought by them for possession of one-third of certain real property. At the same time, on appeal by two of the other persons aforesaid, it affirmed a decree which *U.* had obtained against those persons and the sons of *K.* for possession of two-thirds of the same property, in a suit in which he claimed possession of the whole. It subsequently, on appeal by *U.* against that portion of the decree made in the suit brought by him which dismissed his claim in respect to one-third of the property, reversed that portion and gave him a decree for the whole. The sons of *K.* appealed to the Privy Council only from the decree of the High Court setting aside the decree obtained by them in the Court of first instance for one-third of the property. The Privy Council set aside this decree of the High Court and restored the decree of the Court of first instance. In the mean time *U.* was put into possession of the whole property, in execution of the decree of the High Court which he had obtained in the suit brought by him. When the sons of *K.*, in the execution

EXECUTION OF DECREE—*contd.*

of the decree of the Privy Council, applied for possession of one-third of the property, *U.* opposed the application on the ground that he was in possession under a decree of the High Court which had become final :—

Held, that the decree of the Privy Council must be executed, notwithstanding that its execution involved the disturbance of the possession obtained by *U.* under the decree of the High Court which had become final. The decree of the Privy Council was later in date, and had *U.* desired to secure his possession he should have pleaded the decree of the High Court in the cross-suit when the suit in which the decree of the Privy Council was passed was before that tribunal in appeal. UDAI SINGH *v.* BHARAT SINGH ..... **I. L. Rep. 1 All. 456.**

15. —— *Attachment of Pay of Military Officer—Stat. 40 Vict., Cl. 7, § 99.*] A decree against a Military Officer serving in India, specially directed, with reference to § 99 of Stat. 40 Vict., Cl. 7, that the judgment-debt should be stopped and paid to the judgment-creditor out of a moiety of any pay coming to the judgment-debtor.

The decree being sent to Allahabad for execution, certain moveable property of the judgment-debtor was attached, the District Judge disallowed an objection to such attachment made by the judgment-debtor, on the ground that it was one to be urged before the Court which made the decree, and not before him :—

Held, that the District Judge in receiving the application for execution was bound to consider whether there was anything to prevent execution in the manner prayed; and that the decree-holder could not obtain satisfaction of the decree by attachment of the judgment-debtor's moveable property. MERCER *v.* NARPAT RAI. *Turner*, C.J. (Offg.), and *Pearson*, J...**I. L. Rep. 1 All. 730, 1878.**

16. —— *Substance of Transaction.*] In execution proceedings the Court will look at the substance of the transaction, and will not set aside an execution on mere technical grounds when they find that it is substantially right. BISSESSUR LALL SAHOO *v.* MAHARAJAH LUCHMESSUR SINGH...**L. Rep. 6 I. A. 233; 5 Cal. Rep. 477.**

S. C. under **Hindu Law—Undivided Family. 10.**

Digitized by Google

EXECUTION OF DECREE—*contd.*

17. —— *Transfer of Decree to another Court for Execution—Assignment of Decree—Application for Execution.*] Where a decree was sent to another Court for execution, and was subsequently transferred by assignment, and the transferee applied for execution of the decree to the Court to which it had been sent for execution:—

Held, that such application should be made, not to such Court, but to the Court which passed the decree. KADIR BAKSH *v.* ILAHI BAKSH. *Pearson* and *Spankie*, JJ.....**I. L. Rep. 2 All. 283, 1879.**

See **12**, *supra.*

18. —— *Limitation—Application to enforce or keep in force.*] *Held*, that an application to the Court which passed a decree, that it may be sent to another Court for execution, is an application to keep such decree in force within the meaning of the Limitation Act. COLLINS *v.* MAULA BAKSH. *Pearson* and *Spankie*, JJ...**I. L. Rep. 2 All. 284, 1879.**

19. —— *Transfer of Decree—Due Diligence—Civil Procedure Code, Act X. of* 1877, §§ 230, 232—*Application by Transferee for Execution—Order for Notice to issue—Failure to pay Court Fees—Subsequent Application.*] The transferee of a decree applied, while an application by the original holder was still pending, to be allowed to execute it. The Court, in accordance with § 232 of Act X. of 1877, directed notice of the transferee's application to be given to the transferor and the judgment-debtor. The transferee failed to pay the Court fee leviable for the issue of such notice, and the Court dismissed his application. The transferee subsequently applied a second time to be allowed to execute the decree:—

Held, that such application could not be rejected, with reference to § 230 of Act X. of 1877, on the ground that due diligence had not been used on the former application to procure complete satisfaction of the decree, because such application had not been granted, though the order for serving the notice had been drawn up, and, therefore, the question whether "on the last preceding application" due diligence was used to procure such satisfaction did not arise. SADIK ALI KHAN *v.* MUHAMMAD HUSAIN KHAN. *Spankie* and *Oldfield*, JJ.....**I. L. Rep. 2 All. 384, 1879.**

20. —— *For Mesne Profits—Act VIII. of* 1859—*Ascertainment of Amount of Mesne Profits—Interest.*] A decree had been obtained for mesne profits, which only allowed interest upon the consolidated sum arrived at by the Court as mesne profits after such mesne profits had been ascertained. The Lower Court, in estimating, in execution of this decree (which was governed by the provisions of Act VIII. of 1859), the amount of mesne profits due to the decree-holder, added together the totals of the rents which the Ameen found to have been paid in each year to the judgment-debtor by the ryots, but did not allow interest on each year's rent:—

Held, that in assessing the mesne profits, interest should have been allowed on each year's rent as compensation for loss of the money. The judgment-creditor, who had been kept out of possession, was entitled not merely to bare rental, but to compensation for the loss he had sustained. In the present case, where the dispossession had extended over eight years, interest should be charged for seven years on the aggregate of the rents received or receivable for the first year, for six years on the rents received or receivable for the second year, and so on; and the aggregate of these sums should constitute the mesne profits which it was the duty of the Court executing the decree to ascertain and determine. Interest on this consolidated sum would then run as provided for in the decree. *Protab Chunder Borooah* v. *Ranee Surno Moyee* (14 W. Rep. 151), *Sokhee Monee Debia* v. *Brijoraj Mookerjee* (17 W. Rep. 228), and *Chowdhry Wahed Ali* v. *Musst. Jumaye* (19 W. Rep. 87), followed. HURRODURGA CHOWDHRANI *v.* SHARRAT SOONDERY DABEA. *Morris* and *Prinsep*, JJ.....**I. L. Rep. 4 Cal. 674, 1878.**

21. —— *Of Small Cause Court—Mofussil—Act X. of* 1877, § 648.] A decree of a Mofussil Small Cause Court can be executed by it at any place within the local limits of the jurisdiction of the District Court to which it is subordinate, as defined by § 2 of Act X. of 1877, without having recourse to the procedure under § 648 of that Act, which applies only to cases in which a decree passed in one district has to be executed in another district. BADAN BEBAJEA *v.* KALA CHAND BEBAJEA. *Jackson* and *McDonnell*, JJ.....**I. L. Rep. 4 Cal. 823, 1879.**

22. —— *Of Mofussil Small Cause Court against Immoveable Property—Act XI. of* 1865, §§ 20, 51.] The Judge of a Court of Small Causes who has been duly invested with the

Digitized by Google

EXECUTION OF DECREE—*contd.*

powers of a Subordinate Judge under the provisions of Act XI. of 1865, § 51, has "general jurisdiction" within the meaning of § 20 of that Act, and can consequently under the provisions of that section, enforce a decree of the Small Court against the immoveable property of the judgment-debtor within his jurisdicdition. GOPAL *v.* NANKU. *Turner* and *Oldfield*, JJ.....**I. L. Rep. 1 All. 624, 1878.**

23. —— *Of Mofussil Small Cause Courts beyond their Local Jurisdiction—Jurisdiction—Civil Procedure Code, Act X. of* 1877, §§ 223 *to* 229 *and* 648.] Small Cause Courts in the Mofussil are not at liberty to execute decrees against (moveable) property beyond their local jurisdiction. MANSUK MOZUMDAR *v.* SHIVRAM DEVISING. *Westropp*, C.J., and *Melvill*, J.....**I. L. Rep. 2 Bom. 532, 1878.**

24. —— *Of the Court of Small Causes at Bombay—Act VIII. of* 1859, § 287—*Immoveable Property—Act IX. of* 1850, § 78.] Although the Bombay Court of Small Causes can only enforce its decree against moveable property, yet if that decree be transmitted to a Court to which Act VIII. of 1859 applies, the latter can, under § 287 of that Act, enforce it against immoveable property also.

Quære, whether a Court executing the decree of a Small Cause Court under § 78 of Act IX. of 1850 could enforce it against immoveable property. *In re* JAGJIVAN NANABHOY. *West* and *N. Haridas*, JJ...**I. L. Rep. 1 Bom. 82, 1875.**

EXECUTION AGAINST SURETY—Giving Time to Principal—Interest.

See **Principal and Surety. 3.**

RAMANUND *v.* CHOWDHRY SOONDER..... **I. L. Rep. 4 Cal. 331.**

EXECUTION OF POWER OF APPOINTMENT.

See **Will. 8.**

FEHRSEN *v.* SIMPSON...**I. L. Rep. 4 Cal. 514.**

EXECUTOR—Assignment of Legacy to—by Legatee.

See **Will. 3.**

VAUGHAN *v.* HESELTINE.....**I. L. Rep. 1 All 753.**

HURST *v.* MUSSOORIE BANK. **Ibid. 762, 766.**

EXECUTOR—*contd.*

—— Hindu Will—Rights of.

See **Probate. 1.**

BEHARRY *v.* JUGGO...**I. L. Rep. 4 Cal. 1.**

—— Renunciation of Probate by—Proof of Execution of Will in Court.

See **Hindu Law—Will. 3.**

SARBOMUNGOLA *v.* MOHENDRONATH.....**I. L. Rep. 4 Cal. 508.**

—— Residuary Estate—when Executors will take in Absence of Express Devise.

See **Will. 1.**

TREEPOORASOONDERY *v.* DERENDRONATH...**I. L. Rep. 2 Cal. 45.**

EXECUTOR, ESTATE OF—*Hindu Will—Estate of Executor.*] Where there is no gift of an estate to the executors of a Hindu will, independently of the provisions of the Indian Succession Act X. of 1865 as applied by Act XXI. of 1870 to the wills, executed within the local limits of the ordinary civil jurisdiction of the High Courts, by Hindus after the 1st September 1870, the executors of a Hindu do not, in the character merely of executors, take any estate, properly so called, in the property of the deceased; or, in other words, the mere nomination of executors, though followed by probate, does not of itself confer any estate on the executor further than the estate he may have by the express words of the will, or as heir of the testator. MANIKLAL ATMARAM *v.* MANIKSHA DINSHA COACHMAN. *Green*, J.....**I. L. Rep. 1 Bom. 269, 1876.**

S C. under **Hindu Law—Will. 10.**

2. —— *Hindu Will—Rights of Executor—Undisposed-of Residue.*] The English common law rule that the undisposed-of residue of personal estate vests in the executors beneficially, does not apply to Hindus; the reason for that rule, *viz.*, that the title of an executor to personalty is derived, not from any gift of the testator, but from the operation of law incident to the office, and that, therefore, if the testator had not, directly or indirectly, declared any purpose to which he was to apply it, there was nothing to interfere with the legal title of the executor—not existing in the case of the executor of a Hindu.

The mere fact that a Hindu testator has made bequests of special portions of his property to the heir, will not exclude the heir from the un-

Digitized by Google

EXECUTOR, ESTATE OF—*contd.*

disposed of residue, or entitle the executors to it beneficially. Disherison is not to be laboriously spelt out of a will. The intention to disinherit must be clear. An executor, who, by the will, is made an express trustee for certain purposes, is, as to the undisposed-of residue, a trustee, within the scope of § 2 of Act XIV. of 1859, for the heir or heirs of the testator. LALLUBHAI BAPUBHAI *v.* MANKUVERBAI...I. L. Rep. 2 Bom. 388, 1876, F. B.

EXECUTORS—POWER OF—*Act X. of 1865, § 269—Mortgage—Power of Sale.*] *S.*, an Englishman domiciled in India, by his will dated the 24th of March 1869, charged his real and personal estate with the payment of his debts, and appointed his wife *S. E.*, and three of his children, *M.*, *R.*, and *W.*, his executors. *S.* died on the 1st of April 1869, and probate of his will was granted to all the persons named as executors. In December 1869, *S. E.* applied to the Delhi and London Bank for a loan to discharge debts incurred in the administration of the testator's estate, offering to mortgage a portion of the estate as security. The loan was granted, a bond to secure the amount being executed by *S. E.*, *R.*, and *W.*, as executors, and a mortgage deed of a portion of the estate being executed by *S. E.*, as executrix. In August 1872, another bond for the amount due was executed by *S. E.*, *R.*, and *W.*, as executors, and by the same persons in the same character a portion of the testator's estate was mortgaged to secure the amount due on this bond. By another bond dated the 20th of July 1874, *S. E.*, *R.*, and *W.*, describing themselves as executors, bound themselves to pay the Bank Rs. 34,250 and interest. By a second instrument, duly registered, and bearing the same date as the bond, the same persons, under the same description, conveyed to the manager of the Bank, as security for the debt created by their bond, all their right, title, and interest in certain estates of the testator known as Rockville and Fairy Land; and in the event of default of payment of the sum secured by the bond, they authorized and empowered the manager of the Bank, his successors or assigns, absolutely to sell the properties mortgaged, either by public auction or by private sale; to sign a conveyance or conveyances, and a receipt or receipts for the consideration-money, and declared that such conveyance or conveyances, receipt or receipts, should be as valid as if signed by them. By a third instrument, also duly registered and bearing the same date, the same persons, under the same description, constituted the manager of the Bank for the time being their attorney to sell the said last-mentioned estates. Default being made in payment of the bond-debt, by a deed which recited that at the date of the original loan *M.* was resident in England, and had declined to continue acting as executrix, and which recited the several instruments to which reference has been made, *C. E. B.*, described as manager of the Bank, in exercise of the power of sale, and for the purpose of reimbursing the Bank the moneys advanced by it, granted and conveyed to the plaintiff the estate called Rockville, and all the estate and interest therein of *S. E.*, *R.*, and *W.*, as executrix and executors. When the plaintiff endeavoured to obtain possession she was resisted by the defendant, a son of the testator, and a legatee under his will. The plaintiff therefore sued the legatee and executors to establish her title to the estate, and to recover possession. The legatee contended that the executors had no authority to confer a power of sale on the Bank:—*Held*, by *Pearson* and *Turner*, JJ., that according to the English law the charge of debts on the real and personal estate would probably be sufficient by itself to authorise a sale or mortgage by the executors for the payment of debts, and by the same law an executor may mortgage with a power of sale property which wholly vests in him, the power of sale given to the mortgagee not being a delegation of a power entrusted to the executor, but the creation of a new power for the benefit of the persons interested in the mortgage, and, to render the mortgage effectual, the right to create that power being incidental to the authority of the executor to mortgage.

But the present case must be decided by the law of India as laid down in the Indian Succession Act X. of 1865. By § 269 of that Act, executors may dispose of the property of a deceased person "in such manner as they think fit." This language authorises an executor to execute a mortgage with power of sale. For the purposes of his office an executor is by the law of India invested with the same powers of conveying a testator's estate as the owner himself possessed.

It is his duty to mortgage or sell the estate only when there is necessity for it, but in creat-

Digitized by Google

EXECUTORS—POWER OF—*contd.*

ing a power of sale in a mortgage he does not delegate the duty imposed on him. The three instruments executed on the 20th of July 1874, must be regarded as parts of the same transaction. The mortgage was intended to be a collateral security for the bond. The power of attorney was intended to give effect to the power of sale in the mortgage. Such a power is simply auxiliary to the power of sale, and almost invariably is conferred by the same deed as the power of sale; and it is not invalidated by being created by a separate instrument. The conveyance, therefore, to the plaintiff was valid.

By *Spankie*, J.—The executors were acting under the authority vested in them by § 269 of Act X. of 1865, and not under any power of sale delegated to them as a trust by the testator relying on the exercise of their own personal discretion and judgment. The power given by § 269 of Act X. of 1865 is unqualified. The attorney, therefore, in this case could give a valid title to the plaintiff, acting as he was under an authority given to him by the executors.

By *Stuart*, C.J.,—That by the power of attorney given by the executors to the manager of the Delhi and London Bank, they delegated not only the control of the property and its sale, but their discretion and the confidence reposed in them by the will,—thus delegating their authority and their office,—and in doing so, took no measures to protect the estate; all, therefore, that was done in virtue of that delegation was illegal, and the sale to the plaintiff was invalid.

Section 269 of Act X. of 1865 did not apply to the case. It relates solely to a direct dealing with, or on account of, the estate by the executor or administrator himself, and not by means of any delegation to any other person, or by means of any other intermediary. SEALE *v.* BROWN... **I. L. Rep. 1 All. 710, 1878.**

EXECUTORY TRUST—In a Will.

See **Will. 9.**

C. M. HUNTER.....**I. L. Rep. 4 Cal. 420.**

EXEMPTION FROM DUTY—Property on which Duty has been paid in England.

See **Administration 4.**

MURCH...**I. L. Rep. 4 Cal. 725.**

See **Probate Duty. 2.**

GLADSTONE...**I. L. Rep. 1 Cal. 168.**

EXPOSURE OF INFANT WITH INTENT TO ABANDON.

See **Conviction on several Charges. 3.**

EMPRESS *v.* BANNI.....**I. L. Rep. 2 All. 349.**

EXTENDING TIME FOR APPEAL.

See **Act XXVIII. of 1860. 1.**

KRISHNAREDDI *v.* STUART...**I. L. Rep. 1 Mad. 192.**

See **Company—Winding up. 2.**

LALLA BARROOMUL *v.* THE OFFICIAL LIQUIDATOR...**I. L. Rep. 4 Cal. 704.**

EXTENDING TIME FOR DEPOSIT OF SECURITY FOR COSTS.

See **Security for Costs. 1.**

HAIDRI BAI *v.* E. I. RAILWAY CO.... **I. L. Rep. 1 All. 687.**

EXTENDING TIME FOR DEFENDANT TO APPEAR AND ANSWER SUMMARY SUIT ON PROMISSORY NOTE.

See **Civil Procedure Code, Act X. of 1877, § 532.**

GROOM *v.* WILSON...**I. L. Rep. 3 Cal. 539.**

EXTINGUISHMENT OF DEBT—Limitation Act XIV. of 1859—Suit for Foreclosure—Act IX. of 1871, § 149.

See **Limitation. 17.**

RAMCHUNDER *v.* JUGGUTMONMOHINEY.....**I. L. Rep. 4 Cal. 283.**

EXTINGUISHMENT OF RIGHT OF OCCUPANCY—*Non-Payment of Rent—Submergence of Land.*] Land, formerly in the occupation of tenants, and as to which they had acquired a right of occupancy, were completely submerged for a number of years, and during such submergence no rent was paid or demanded in respect of the submerged lands, nor was there any express surrender of the lands by the tenants, nor did the landlords in any form re-enter on the lands. On the re-formation of the lands, the tenants resumed possession of them, and when called upon by the landlord to enter into new agreements with him, refused to do so, and stood on their right to retain possession as occupancy ryots:—

Held, that the statutory right of occupancy was one which was to be maintained by regular and

Digitized by Google

EXTINGUISHMENT OF RIGHT OF OCCUPANCY—*contd.*

punctual payment of the rent payable. When tenants desire to rely on a valuable right, such as a right of occupacy, they are bound to observe the conditions on which the maintenance of that right depends, and if the tenants desired to maintain their rights of occupancy, they ought to have paid something in the shape of rent. It was not sufficient for them to say that they were ready to pay their rent, or that the landlord should have sued them for it, and that if sued they would have paid at once. Not having paid any rent during the period of submergence, they had given up the possible advantage which they might derive on the re-formation of the lands. HEMNATH DUTT *v.* ASHGUR SINDAR. *Jackson* and *McDonnell*, JJ.....**I. L. Rep. 4 Cal. 894, 1879.**

EXTORTIONATE BARGAIN—Relief against.

See the cases under **Unconscionable Bargain.**

EXTRADITION.

See **Criminal Procedure Code, Act X. of 1872, § 157.**

REG. *v.* LOCHA.....**I. L. Rep. 1 Bom. 340.**

EXTRAORDINARY JURISDICTION.

See the cases collected under **Stat. 24 and 25 Vict., Cl. 104, § 15,** and the Index heading **Superintendence of the High Court.**

EXTRAORDINARY FLOOD—Damage caused by.

See **Tanks—Zemindar's Liability for Damage caused by.**

MADRAS RAILWAY CO. *v.* ZEMINDAR OF CARVATENAGARAM.....**L. Rep. 1 I. A. 364.**

EX-PARTE DECREE.

See **Judgment ex-parte.**

—— Act XI. of 1865, § 21—Non-Appearance of Defendant's Pleader.

See **Judgment ex-parte. 1.**

DAYAL MISREE *v.* KUPPOORCHUND. **I. L. Rep. 4 Cal. 318.**

EX-PARTE DECREE—*contd.*

—— Against Defendant not appearing at Adjourned Hearing.

See **Civil Procedure Code, Act VIII. of 1859, § 119. 1.**

ZAIN-UL-ABDIN KHAN *v.* AHMAD RAZA KHAN....**I. L. Rep. 2 All. 67; L. Rep 5 I. A. 233.**

—— Appeal from—and Order refusing to set aside.

See **Appeal—Civil. 2. 9.**

LACKMIDAS *v.* EBRAHIM.....**I. L. Rep. 2 Bom. 644.**

GULAB SINGH *v.* LACHMAN DAS... **I. L. Rep. 1 All. 748.**

See **Civil Procedure Code, Act VIII. of 1859, § 119. 1.**

ZAIN-UL-ABDIN KHAN *v.* AHMAD RAZA KHAN...**I. L. Rep. 2 All. 67; L. Rep. 5 I. A. 233.**

—— Effect of—Admissibility in Evidence.

See **Judgement ex-parte. 2.**

BIRCHUNDER *v.* HURRISH CHUNDER...**I. L. Rep. 3 Cal. 383.**

—— Limitation for Execution of—Appeal from Order refusing to set aside.

See **Limitation. 87.**

SHEO PRASAD *v.* ANRUDH SINGH... **I. L. Rep. 2 All. 273.**

—— Limitation for Execution of.

See **Limitation. 67.**

PROSONNO CHUNDER *v.* PROSSONO COOMAR...**I. L. Rep. 2 Cal. 123.**

—— Refusal to Receive Written Statement as not filed in Time—Issues framed in presence of Defendant's Pleader who cross-examined Witnesses — Decree passed thereafter is not an.

See **Judgement ex-parte. 3.**

RAGHAPA *v.* PARAPA...**I. L. Rep. 1 Bom. 217.**

—— In Regular Appeal—Appeal from—by Respondent.

See **Appeal—Civil. 6.**

KALI KISHORE *v.* DHUNUNJOY...**I. L. Rep. 3 Cal. 226.**

Digitized by Google

EX-PARTE DECREE—*contd.*

—— Re-hearing granted after Expiration of Time limited by Law—Special Appeal.

See **Civil Procedure Code, Act VIII. of 1859, § 119. 2.**

RUNGLALL MISSER *v.* TOKHUN MISSER...**I. L. Rep. 2 Cal. 114.**

EX-PROPRIETARY TENANT.

—— Right of—to hold *Sir* Lands.

See **Act XVIII. of 1873, § 7.**

BAKHAT RAM *v.* WAZIR ALI...**I. L. Rep. 1 All. 448.**

BHAGWAN SINGH *v.* MURLI SINGH. **Ibid. 459.**

FABRICATING FALSE EVIDENCE—And voluntarily Assisting in Concealing Stolen Property.

See **Conviction on several Charges. 2.**

EMPRESS *v.* RAMESHAR RAI...**I. L. Rep. 1 All. 379.**

1. —— *Attempt—Abatement—Penal Code,* §§ 193, 511.] *M.* instigated *Z.* to personate *C.*, and to purchase in *C.*'s name a certain stamped paper, in consequence of which the vendor of the stamped paper endorsed *C.*'s name upon it as the purchaser. *M.* acted with the intention that such endorsement should be used against *C.* in a judicial proceeding :

Held, that the offence of fabricating false evidence had been completed, and that *M.* was properly convicted of abetment thereof. EMPRESS *v.* MULA. *Turner*, J...**I. L. Rep. 1 All. 105, 1879.**

FALSE CHARGE.

See **Penal Code, § 211. 1. 2.**

EMPRESS *v.* ABUL HASAN...**I. L. Rep. 1 All. 497.**

EMPRESS *v.* SALIK ..... **Ibid. 527.**

—— Criminal Intimidation by Threat to bring—Conviction of—Security to keep the Peace.

See **Criminal Procedure Code, Act X. of 1872, § 489. 2.**

EMPRESS *v.* RAGHUBA...**I. L. Rep. 2 All. 351.**

FALSE EVIDENCE—Abetment of—Presumption as to.

See **Criminal Procedure Code, Act X. of 1872, § 471.**

REG. *v.* BAIJOO LALL...**I. L. Rep. 1 Cal. 450.**

—— Charge—Vagueness.

See **Criminal Procedure Code, Act X. of 1872, § 471. 2.**

REG. *v.* BAIJOO LALL...**I L. Rep. 1 Cal. 450.**

—— Jurisdiction to try for—of Court before which the—was given.

See **Criminal Procedure Code, Act X. of 1872, § 471. 1, and § 473. 1. 2. 3.**

REG. *v.* KULTARAN SINGH...**I. L. Rep. 1 All. 129.**

REG. *v.* JAGAT MAL.....**Ibid. 162.**

REG. *v.* GUR BAKSH...**Ibid. 193.**

REG. *v.* KASHMIRI LAL..**Ibid. 625.**

ANON...**I. L. Rep. 1 Mad. 305.**

—— Order sending case to Magistrate to inquire into Offence of.

See **Criminal Procedure Code, Act X. of 1872, § 471. 1. 2.**

REG. *v.* BAIJOO LALL.. **I. L. Rep. 1 Cal. 450.**

—— *Criminal Procedure Code* (*Act X. of* 1872) § 473.] The offence of giving false evidence is "an offence committed in contempt of the authority" of a Court, within the meaning of § 473 of the Criminal Procedure Code (Act X. of 1872). *Reg.* v. *Kultaran Singh* (I. L. Rep. 1 All. 129) and *Reg.* v. *Jagat Mal* (*ibid.* 162) dissented from.

When an accused was committed by a Magistrate, First Class, for trial by the Session Court, on a charge of having given false evidence in a judicial proceeding before the Sessions Judge, there being no Assistant or Joint Sessions Judge :—

Held, that the case must be transferred to another Court of Session for trial, as the commitment could not be quashed, there being no error in law.

In such a case as the above, it would be better for the Magistrate to try the case himself, and if the sentence which he is competent to pass is

Digitized by Google

FALSE EVIDENCE—*contd.*

insufficient, the Sessions Judge should refer the case to the High Court for enhancement of sentence. REG. *v.* GAJI. *Melvill* and *N. Harridas*, JJ.....I. L. Rep. 1 Bom. 311, 1876.

FAMILY ARRANGEMENT—Adoption—Gift to Widow for Life.

See **Hindu Law—Alienation of Widow. 1.**

MUSST. BHAGBUTTI DAEE *v.* CHOWDRY BHOLANATH THAKOOR... L. Rep. 2 I. A. 256.

FAMILY CUSTOM—Primogeniture.

See **Hindu Law—Inheritance—Primogenitnre.**

CHOWDHRY CHINTAMUN SINGH *v.* MUSST. NOWLUKHO KONWARI. L. Rep. 2 I. A. 263; I. L. Rep. 1 Cal. 153.

—— *Bengal Regulations XI. of* 1793 *and X. of* 1800—*Discontinuance of Family Custom.*] In a suit to recover possession of an estate by virtue of an alleged family custom that the estate was descendible on the eldest son to the exclusion of the other sons, and by which the estate was impartible and inalienable, there was evidence which led reasonably to the belief that formerly the estate was held, from time to time, by individual male members of the family; but the evidence left in obscurity the character and nature of the estate, and the tenure by which it was held under Mahomedan rule.

Certain documents were filed in the suit, as to which their Lordships said, that if they could be relied upon, they pointed to the conclusion that the estate was held under the Mahomedan rulers as a *jagir* on the tenure of military service, by virtue of grants made from time to time to individual members of the family, and was not strictly an inheritable estate. If, on the other hand, they could not be relied on, then, as above mentioned, the original character of the estate, the nature and conditions of the tenure, were left altogether in doubt; but there was admittedly a settlement of it by the Government at the time of the perpetual settlement:—

Held, that upon that settlement, any incidents of the old tenure, as a military *jagir*, requiring the render of services, if any such ever existed, were, as conditions of tenure, impliedly at an end; and that the zemindari, so far as related to tenure, was thenceforth held under the Government as an ordinary zemindari free from any such conditions. The settlement would not, however, of itself have operated to destroy a family usage regulating the manner of descent. It would not have had this effect in the case of a well-established *raj*; and even in the case where the origin could not be shown, it might be assumed that it would not, of itself, affect an existing family custom.

Held also, without giving any opinion on the effect of Bengal Reg. XI. of 1793, that there was sufficient ground for the presumption that after the settlement and that Regulation, the family were induced to regard the former state of things and the ancient tenures, whatever they were, as at an end, and to consider and treat the property as an ordinary estate under the British Government. Their acts showed that in fact they did so consider and treat it, and that they did not regard the manner of succession, if it ever prevailed, in the light of a family custom, but as an incident or condition of tenure which had been dertermined by the settlement, and consequently assumed that thenceforth the succession would conform to the ordinary law. Their conduct, indeed, went far to disprove that a family custom, properly so-called, ever existed; but, assuming it to have once existed, it was of a nature which could, without the sanction of Government and without any violation of the law, be put an end to, and was in fact discontinued.

There is no principle or authority for holding that in point of law a manner of descent of an ordinary estate, depending solely on family usage, may not be discontinued, so as to let in the ordinary law of succession. Such family usages are in their nature different from a territorial custom, which is the *lex loci* binding all persons within the local limits in which it prevails. It is of the essence of family usages that they should be certain, invariable, and continuous, and well established discontinuance must be held to destroy them. This would be so when the discontinuance has arisen from accidental causes; and the effect cannot be less when it has been intentionally brought about by the concurrent will of the family. RAJKISHEN SINGH *v.* RAMJOY SURMA MOZOOMDAR...I. L. Rep. 1 Cal. 186, 1872; 19 W. R. 8 P. C.

Digitized by Google

FAMILY HOUSE—Mortgage of.

See **Hindu Law — Alienation of Ancestral Property. 1.**

BHIKHAM DAS *v.* PURA.....**I. L. Rep. 2 All. 141.**

—— Sale of—in Execution of Decree of Mortgage.

See **Hindu Law — Alienation of Ancestral Property. 1.**

BHIKHAM DAS *v.* PURA.....**I. L. Rep. 2 All. 141.**

—— Non-Residence in—by Hindu Widow does not disentitle her to Maintenance.

See **Hindu Law — Maintenance of Widow. 2. 3. 7.**

RANGO VENAYAK *v.* YAMUNABAI... **I. L. Rep. 3 Bom. 44.**

KASTURBAI *v.* SHIVAJIRAM...**Ibid. 372.**

NARAYANRAO *v.* RAMABAI.....**L. Rep. 6 I. A. 114; I. L. Rep. 3 Bom. 415.**

—— Widow's Right of Residence in.

See **Hindu Law—Widow's Right of Residence in Family House.**

GAURI *v.* CHANDRAMANI.....**I. L. Rep. 1 All. 262.**

FARM OF TOLLS—Contract of—not under Seal of Commissioners.

See **Madras Act III. of 1871. 3.**

GOODRICH *v.* VENKANNA...**I. L. Rep. 2 Mad. 104.**

FARMER.

See **Madras Act VIII. of 1865, § 1.**

ZINULABDIN *v.* VIJIAN.....**I. L. Rep. 1 Mad. 49.**

FATHER'S SISTER'S SON, RIGHT OF, TO INHERIT.

See **Hindu Law — Inheritance — Father's Sister's Son.**

THAKOOR JEEBNATH *v.* THE COURT OF WARDS...**L. Rep. 2 I. A. 163.**

FEE—Pleader's— Pre-emption Suit— Costs as between Party and Party.

See **Pleader's Fees.**

DEBI SINGH *v.* BHUP SINGH...**I. L. Rep. 1 All. 709.**

FEES—Of Village Priest.

See **Right to Sue. 13.**

DINANATH *v.* SADASHIV...**I. L. Rep. 3 Bom. 9.**

FEMALE—Right of—to succeed to Shebaitship.

See **Hindu Law—Adoption. 2.**

JANOKEE DEBEE *v.* GOPAL ACHARJIA...**I. L. Rep. 2 Cal. 365.**

FERRY—Lease of Government—Covenant not to assign or underlet—Admission of Partner.

See **Illegal Contract.**

GAURI SHANKAR *v.* MUMTAZ ALI KHAN... **I. L. Rep. 2 All. 411.**

—— Public—Plying Boats near.

See **Criminal Trespass. 2.**

MUTHRA *v.* JAWAHIR...**I. L. Rep. 1 All. 527.**

FERRY RIGHTS—*Infringement of—Right to restrain a Party starting a Second Ferry.*] *A.*, the owner of a ferry granted him under a Government settlement, brought a suit to restrain *B.* from running another ferry over the same spot where *A.*'s ferry plied for hire. It appeared that *B.* levied no tolls on his ferry, but it was not shown that it was used only for the conveyance of his own servants and ryots:—*Held*, that the suit was maintainable. It is too late to contend that in the Courts of this country a zemindar cannot have such a right of ferry arising out of a grant of settlement, as that the infringement of that right, by reason of the establishment of another ferry at a short distance from it, will not give a right of action. LUCHMESSUR SINGH *v.* LEELANAND SINGH. *Jackson* and *Tottenham*, JJ...**I. L. Rep. 4 Cal. 599; 3 Cal. Rep. 427, 1878.**

FIERI FACIAS, WRIT OF—Sale of Mortgagor's Interest under—obtained by Mortgagee—Right of Purchaser.

See **Mortgage. 5.**

TUKARAM *v.* RAMCHANDRA...**I. L. Rep. 1 Bom. 314.**

See **Sheriff's Sale. 3.**

BHUGGOBUTTY *v.* SHAMACHURN. **I. L. Rep. 1 Cal. 337.**

Digitized by Google

FINAL DECREE.

See **Pre-emption. 3. 8.**

HINGAN KHAN *v.* GANGA PARSHAD.....**I. L. Rep. 1 All. 292.**

SHAIKH EWAZ *v.* MOKUNA BIBI... **Ibid. 132.**

FINAL DECREE OF APPELLATE COURT.

See **Limitation. 69. 76.**

UMIASHANKAR *v.* CHOTALAL...**I. L. Rep. 1 Bom. 19.**

IMAM ALI *v.* DASAUNDHI RAM... **I. L. Rep. 1 All. 508.**

FINALITY OF ORDER ADMITTING REVIEW.

See **Review. 2.**

ROY MEGHRAJ *v.* BEEJOY GOVIND BURRAL...**I. L. Rep. 1 Cal. 197.**

FINE—Refund of—on Quashing Conviction.

See **High Court Criminal Procedure Code, Act X. of 1875, § 147. 3.**

REG. *v.* HADJEE JEEBUN BUX...**I. L. Rep. 1 Cal. 354.**

FIRE—Exception of Liability for Loss by—in Bill of Lading.

See **Bill of Lading.**

CHIN HONG & CO. *v.* SENG MOH & CO...**I. L. Rep. 4 Cal. 736.**

FISHERY.

See **Jalkar.**

—— Public River—Exclusive Right—Infringement.

See **Criminal Trespass. 3.**

EMPRESS *v.* CHARN NAKYIAH...**I. L. Rep. 2 Cal. 354.**

—— Right of—in Public Navigable Rivers.

See **Right of Fishery in Public Navigable Rivers.**

PROSUNNO COOMAR *v.* RAM COOMAR...**I. L. Rep. 4 Cal. 53.**

—— Right of—in the Sea.

See **Right of Fishing in the Sea.**

BABAN *v.* NAGU...**I. L. Rep. 2 Bom. 19.**

"FIXED RENT"—Act X. of 1859, § 15.

See **Enhancement of Rent. 2. 3.**

HURRONATH *v.* GOBIND CHUNDER.. **L. Rep. 2 I. A. 193.**

MEER MAHOMED HOSSEIN *v.* FORBES...**L. Rep. 2 I. A. 1.**

—— Right of Mirasdar to hold at a.

See **Miras. 1. 2.**

BABAJI *v.* NARAYAN...**I. L. Rep. 3 Bom. 340.**

VISHNUBHUT *v.* BABAJI.....**Ibid. 345, n.**

See **Enhancement of Rent. 5.**

PARSOTAM KESHAVDAS *v.* KALYAN RAVJI...**I. L. Rep. 3 Bom. 348.**

FIXTURES—*Goods and Chattels—Sale of Oil and Flour Mills and Engine in Execution of Decree of Small Cause Court.*] Oil and flour mills and a steam engine and boiler, and other accessory machinery by which the mills are worked, are fixtures, and not "goods and chattels" within the meaning of § 58 of Act IX. of 1850, and cannot, therefore, be taken in execution of a decree of a Small Cause Court. Such fixtures are trade fixtures, and such as according to the English law a tenant might remove as against his landlord, but the question whether fixtures are removeable by a tenant as against his landlord, has nothing to do with the question whether they are seizable in execution. MILLER *v.* BRINDABUN. *Wilson*, J...**I. L. Rep. 4 Cal. 946; 4 Cal. Rep. 460, 1879.**

FLOW OF WATER—Right to.

See **Artificial Watercourse.**

RAMESHUR *v.* KOONJ BEHARRY... **L. Rep. 6 I. A. 33; L. Rep. 4 App. Ca. 121; I. L. Rep. 4 Cal. 633.**

See **Easement. 4.**

MORGAN *v.* KIRBY...**I. L. Rep. 2 Mad. 46.**

See **Riparian Proprietors.**

KALI KISHEN *v.* JADAV LAL...**L. Rep. 6 I. A. 190.**

FORECLOSURE—Of Conditional Sale—Effect of.

See **Hindu Law—Ancestral Property.**

SHAM NARAIN *v.* RUGHOOBURDYAL. **I. L. Rep. 3 Cal. 508.**

Digitized by Google

FORECLOSURE—*contd.*

—— Of First of two Mortgages of same Property to same Mortgagee—Merger.

See **Mortgage. 10.**

KALIPROSONNO *v.* KAMINI SOONDURI.....**I. L. Rep. 4 Cal. 475.**

—— Jurisdiction—Mortgage of Lands partly in Oudh and partly in N.-W. P.

See **Mortgage. 24.**

SURJAN SINGH *v.* JAGAN NATH SINGH .....**I. L. Rep. 2 All. 213.**

—— Limitation to Suit for.

See **Assignment of Mortgage.**

GANPAT *v.* ADARJI...**I. L. Rep. 3 Bom. 312.**

See **Limitation. 17.**

RAMCHANDRA *v.* JUGGUTMONMOHINEY.....**I. L. Rep. 4 Cal. 283.**

—— Notice of—Right of Second Mortgagee to.

See **Beng. Reg. XVII. of 1806, § 8.**

DIRGAJ SINGH *v.* DEBI SINGH...**I. L. Rep. 1 All. 499.**

—— by One of several Joint Mortgagees.

See **Mortgage. 17.**

BISHAN DIAL *v.* MANNI RAM...**I. L. Rep. 1 All. 297.**

—— Re-opening.

See **Mortgage. 10**

KALIPROSONNO *v.* KAMINI SOONDURI.....**I. L. Rep. 4 Cal. 475.**

—— Service of Notice of—Beng. Reg. XVII. of 1806, § 8—Proof.

See **Mortgage. 13. 14.**

NORENDER NARAIN *v.* DWARKA LAL **L. Rep. 5 I. A. 18; S. C. I. L. Rep. 3 Cal. 397.**

BANK OF HINDUSTAN, &c. *v.* SHOROSHIBALA DEBEE.....**I. L. Rep. 2 Cal. 311.**

—— Suit for—barred by Act XIV. of 1859—Act IX. of 1871, § 149.

See **Limitation. 17.**

RAMCHUNDER *v.* JUGGUTMONMOHINEY...**I. L. Rep. 4 Cal. 283.**

FOREIGN COURT—Jurisdiction of—in respect of Bill of Exchange drawn within its Jurisdiction by British Subject neither Resident nor Domiciled therein in Favour of Creditor Resident therein.

See **Jurisdiction. 7.**

MATHAPPA *v.* CHELLAPPA...**I. L. Rep. 1 Mad. 196.**

FOREIGN JUDGMENT—Suit on.

See **Jurisdiction. 7.**

MATHAPPA *v.* CHELLAPPA...**I L. Rep. 1 Mad. 196.**

FOREIGN JURISDICTION AND EXTRADITION ACT.

See **Act XI. of 1872.**

FOREIGN TERRITORY—Bill of Exchange drawn in—by British Subject neither Resident nor Domiciled therein, in Favour of Creditor Resident therein—Jurisdiction of Foreign Court.

See **Jurisdiction. 7.**

MATHAPPA *v.* CHELLAPPA...**I. L. Rep. 1 Mad. 196.**

FOREIGN TERRITORY — OFFENCE COMMITTED IN—Jurisdiction of British Courts.

See **Criminal Procedure Code, Act X. of 1872, § 67. 1. 2.**

REG. *v.* ADIWGADU...**I. L. Rep. 1 Mad. 171.**

REG. *v.* LAKHYA...**I. L. Rep. 1 Bom. 50.**

See **Criminal Procedure Code, Act X. of 1872, § 157.**

REG. *v.* LOCHA...**I. L. Rep. 1 Bom. 340.**

See **Offence committed at Cyprus.**

EMPRESS *v.* SARMUKH SINGH...**I. L. Rep. 2 All. 218.**

See **Offence committed in Foreign Territory.**

EMPRESS *v.* DOSSAJI...**I. L. Rep. 3 Bom. 334.**

FOREIGN TERRITORY — WARRANT ISSUED IN.

See **Criminal Procedure Code, Act X. of 1872, § 157.**

REG. *v.* LOCHA...**I. L. Rep. 1 Bom. 340.**

Digitized by Google

FORFEITURE — *Suit for Cancelment of Lease—Breach of Conditions — Cancelment of Lease—Perpetual Lease—Payment of Rent to Collector—Failure to pay Instalments of Rent—Sinking Wells and Planting Trees.*]—The plaintiff, the representative in title of a lessor, sued under Cl. *c*, § 93 of Act XIII. of 1873, for the cancelment of a lease, on three grounds, *viz.*, (1) that the lessees had paid the rent to the Collector, on account of the revenue due in respect of the estate, instead of to him; (2) that they had failed to pay certain instalments of rent on the due dates; and (3) that they had planted trees and sunk wells, and allowed their tenants to do the same, without the lessor's consent; thereby committing breaches of the conditions of the lease involving its forfeiture:—

Held, on the construction of the lease, that as it was intended to be perpetual, and as the rent had been paid to the Collector for many years under an arrangement between the parties to the lease, and it was not shown that the plaintiff had repudiated this arrangement or demanded payment of the rent directly to himself, payment of rent by the lessees to the Collector did not amount to a breach of the conditions of the lease; and that the lease being intended to be perpetual, and no arrears of rent being due, irregularity and unpunctuality in the payment of the instalments of rent in question were not breaches of the conditions of the lease involving its forfeiture; and that the condition as to the planting of trees and sinking wells being merely a prohibition, and not a condition the breach of which involved the forfeiture of the lease, the lease could not be cancelled because the lessees had planted trees and sunk wells, and allowed their tenants to do the same, without the lessor's consent.

Held also, that, assuming that the lessor was entitled on this last ground to claim forfeiture, according to the Full Bench ruling in *Sheo Churn* v. *Bussunt Singh* (H. C. Rep. N. W. P., 1871, p. 282), forfeiture is not to be deemed the invariable penalty for breach of contract occasioned by the construction of a well, or improvement of a tenant's holding...ABLAKH RAI *v.* SALIM AHMAD KHAN. *Stuart*, C.J., and *Spankie*, J...**I. L. Rep. 2 All. 437, 1879.**

FORFEITURE OF HINDU WIDOW'S ESTATE.

See **Hindu Law—Forfeiture of Widow's Estate.**

PRAG DAS *v.* HARI KISHEN...**I. L. Rep. 1 All. 503.**

FORFEITURE OF HINDU WIDOW'S ESTATE—*contd.*

—— Incontinence does not create—once vested.

See **Hindu Law—Inheritance of Widow. 1.**

NEHALO *v.* KISHEN LAL...**I. L. Rep. 2 All. 150.**

See **Hindu Law—Disqualification to inherit. 3. 4. 7.**

MUSST. GANGA JATI *v.* GHASITA. **I. L. Rep 2 All. 46.**

BHAVANI *v.* MAHTAB KUAR... **Ibid. 171.**

HONAMA *v.* TIMANBHAT...**I. L. Rep. 1 Bom. 559.**

FORFEITURE OF RECOGNIZANCE—Cross-Examination of Witnesses on Proceedings on.

See **Criminal Procedure Code, Act X. of 1872, § 502.**

EMPRESS *v.* NOBIN CHUNDER DUTT...**I. L. Rep. 4 Cal. 865.**

FORGED CERTIFICATE OF REQUISITION FOR AN ADVANCE OF MONEY—Money paid under—Suit to recover.

See **Contract. 11.**

SHUGAN CHAND *v.* GOVERNMENT OF N. W. PROVINCES...**I. L. Rep. 1 All. 79.**

FORGERY—Suit to have a Deed declared a.

See **Limitation. 58.**

FAKHAROODEEN MAHOMED AHSAN *v.* POGOSE...**I. L. Rep. 4 Cal. 209.**

FORMAL POSSESSION—Delivery of—in Execution of Decree.

See **Limitation. 12. 22.**

KOONJO MOHUN DAS *v.* NOBO COOMAR SHAHA...**I. L. Rep. 4 Cal. 216.**

UMBICKA CHURN GOOPTA *v.* MADHUB GHOSAL...**Ibid. 870.**

FORMER JUDGMENTS AND DECREES—Effect of.

See **Evidence. 1.**

NARRANJI BHIKABHAI *v.* DIPA UMED...**I. L. Rep. 3 Bom. 3.**

Digitized by Google

FRAMING ISSUES—Duty of Judge.

See **Issues. 1.**

APAYA *v.* RAMA.....**I. L. Rep. 3 Bom. 210.**

FRAUD.

See **Limitation. 59.**

CHUNDER NATH *v.* TIRTHANUND. **I. L. Rep. 3 Cal. 504.**

—— Collusive Conveyance in—of Third Persons —Denial by Grantee of Trust for Grantor —Right of Grantor to show real Nature of Transaction.

See **Estoppel. 6.**

PARAM SINGH *v.* LALJI MAL...**I. L. Rep. 1 All. 403.**

FREE PASTURAGE—Right of.

See **Right of Free Pasturage.**

COLLECTOR OF THANA *v.* BAL PATEL...**I. L. Rep. 2 Bom. 110.**

FRESH EVIDENCE—Revival of Prosecution of Persons Discharged without—Illegal.

See the cases under **Revival of Prosecution.**

FRESH PROCLAMATION OF SALE NECESSARY—On Adjournment of Sale in Execution of Decree.

See **Sale in Execution of Decree. 6.**

GOPEE NATH *v.* ROY LACHMIPAT... **I. L. Rep. 3 Cal. 542.**

—— On Release from Attachment of Part of Property before Sale.

See **Sale in Execution of Decree. 11.**

SHIB PROKASH *v.* SARDAR DAYAL. **I. L. Rep. 3 Cal. 544.**

FRESH SUMMONS—Limitation.

See **Practice—Civil. 3.**

RAMKISSEN *v.* LUCKEY NARAIN.. **I. L. Rep. 3 Cal. 312.**

FULL BENCH—Reference to—Conflict of Opinion between Individual Judges no Ground for.

See **Reference to Full Bench.**

RAJ KOOMAR SINGH *v.* SAHEBZADA ROY ..**I. L. Rep. 3 Cal. 20.**

FURLOUGH.

See **Criminal Procedure Code, Act X. of 1872, § 56.**

PURSOORAM BOROOAH...**I. L. Rep. 2 Cal. 117.**

GAMBLING—*Bengal Act II. of* 1867, § 5—*Unauthorised Entry and Arrest—Evidence.*] Where a Police Officer, unauthorized by a Magistrate or District Superintendent of Police enters and searches an alleged gaming-house, and arrests persons found therein, a Magistrate is justified in convicting such persons, if it is proved by independent direct evidence that the house is a gaming-house. In the absence of such evidence that the house which was entered and searched was a gaming-house within the meaning of the Act, it cannot be be presumed to be so under § 6 of the Act, because that presumption only arises when the proceedings are authorized by the preceding section. NAZIR KHAN *v.* PROLADH DULTA. *Jackson*, C.J. (Offg.) and *McDonnell*, J.....**I. L. Rep. 4 Cal. 659, 1878.**

2.—— *Beng. Act II. of* 1867, §§ 5, 6—*Unauthorised Entry and Arrest.*] A Deputy Inspector of Police is not authorized to enter and search an alleged gaming-house, unless he has received authority to do so from a Magistrate or a District Superintendent of Police. Where such an unauthorized entry and subsequent arrest of persons found gambling in an alleged gaming-house takes place, there being no evidence that the house entered and searched was a gaming-house within the meaning of the Act, a Magistrate has no evidence before him on which he can convict.

The evidence required cannot be presumed under § 6 of the Act, because that presumption only arises when the proceedings are authorized by § 5. SRIRAM CHANDRA LERKAN *v.* BIPINDAS. *Mitter* and *McDonnell*, JJ.....**I. L. Rep. 4 Cal. 710, 1879.**

GENERAL RESIDUARY BEQUEST.

See **Will. 7.**

DWARKANATH *v.* BURRODA PERSAD. **I. L. Rep. 4 Cal. 443.**

GHATWALI TENURE—*Grants prior to Permanent Settlement—Dependent Taluks—Bengal Reg. VIII. of* 1793, § 51—*Enhancement of Rent—Limitation.*] In a suit brought to recover arrears of rent in respect of certain *ghatwali*

Digitized by Google

GHATWALI TENURE—*contd.*

taluks situated within the plaintiff's zemindary, and to have his right declared to enhance the rents of the same, at a rate which the Court might think fit, as an equivalent for the *ghatwali* services which had been rendered unnecessary through the agency of Government, it appeared that the defendants and their ancestors had held possession of the taluks in question under grants made prior to the permanent settlement at a fixed rent, on *ghatwali* tenure, one of the conditions of which was that the defendants should provide a certain number of armed men, to watch the ghats and chowkies, &c. In 1863, the Government dispensed with the services on condition of the zemindar paying to Government a certain fixed annual permanent rent. The zemindar thereupon instituted suits against the respective holders of *ghatwali* tenures within his zemindary, and amongst them, against the present defendants, to recover possession of those tenures, on the ground that the services, in consideration of which they were held, were no longer required. These suits were decided against the zemindar by the Courts in India, and those decisions were confirmed on appeal by the Privy Council in 1873.

The plaintiff then instituted the present suit for arrears of rent, and for a declaration of his right to enhance the rent of the defendant's taluk:—

Held, (1) that the present suit was not barred by either § 2 or § 7 of Act VIII. of 1859, by reason of the former proceedings for resumption of the defendant's tenure.

(2). That the plaintiff's claim for arrears of rent was barred by limitation, except so much of it as related to the rent of the three years previous to the institution of the suit.

(3). That the plaintiff was not entitled to enhance the rent of the *ghatwals*, the defendants. They were ready and willing to fulfil the obligations of their sanads as between them and the plaintiff, and it was not because the plaintiff had thought fit to compound the *ghatwali* services with the Government, without the defendants' consent, that the plaintiff had any right to change the terms of the defendants' tenure. So long as the defendants were ready and willing to perform the services, the zemindar had no right to put an end to the tenure, whether the services were required or not.

(4). Even supposing the rent reserved by the sanads were of such a nature as would be liable to

GHATWALI TENURE—*contd.*

enhancement, the defendants were protected from enhancement by § 51 of Bengal Reg. VIII. of 1793, being dependent talukdars within the meaning of that Regulation, any variation in the number of men to be provided and maintained by the defendants, in accordance with the condition of their sanads, not being an abatement of the defendants' *jama* within the meaning of § 51.

Ghatwali tenures were created by the Mahomedan Government in early times, as a means of providing a police and military force, to watch and guard the mountain passes from the invasion of the lawless tribes who inhabited the hill districts. Large grants of land were made in those days by the Government, often to persons of high rank, at a low rent, or at no rent at all, on condition that they should provide and maintain a sufficient military force to protect the inhabitants of the plains from these lawless incursions; and the grantees on their part subdivided and re-granted the lands to other tenants (much in the same way as military tenures were created in England in the feudal age), each of whom, besides paying generally a small rent, held his land in consideration of these military services, and provided (each according to the extent of his holding) a specified number of armed men to fulfil the requirements of the Government. LEELANUND SINGH BAHADOOR *v.* THAKOOR MUNRUNJUN SINGH. *Garth*, C.J., and *McDonnell*, J.....**I. L. Rep. 3 Cal. 251, 1877.**

GIFT.

See **Hindu Law—Gift; Mahomedan Law—Gift.**

—— Deed of—unaccompanied by Possession.

See **Mahomedan Law. 2.**

RANEE KHUJOOROONISSA *v.* MUSST. ROUSHAN JEHAN...**L. Rep. 3 I. A. 291; I. L. Rep. 2 Cal. 184.**

—— Of Defined Share in a Landed Estate—Valid.

See **Mahomedan Law—Gift. 1.**

JIVAN BAKSH *v.* IMTIAZ BEGAM... **I. L. Rep. 2 All. 93.**

—— Of Definite Share of Zemindary.

See **Mahomedan Law—Gift. 2.**

AMEEROONISSA *v.* ABEDOONISSA... **L. Rep. 2 I. A. 87.**

Digitized by Google

GIFT—*contd.*

—— By Father to Daughter—*Soudayakam.*

See **Hindu Law—Alienation by Widow. 2.**

MADHAVARAYA *v.* TIRTHA SAMI... **I. L. Rep. 1 Mad. 307.**

—— By Father or Guardian to a Minor.

See **Mahomedan Law—Gift. 2.**

AMEEROONISSA KHATOON *v.* ABEDOONISSA KHATOON .....**L. Rep. 2 I. A. 87.**

—— By Hindu during his Lifetime of all his Estate—Liability of Donee to maintain Donor's Widow.

See **Hindu Law—Maintenance of Widow. 17.**

JAMNA *v.* MACHUL SAHU...**I. L. Rep. 2 All. 315.**

—— By Hindu Widow.

See **Hindu Law—Gift. 3.**

RUDR NARAIN SING *v.* RUP KUAR. **I. L. Rep. 1 All. 734.**

—— By Hindu Widow of *Soudayakam.*

See **Hindu Law—Alienation by Widow. 2.**

MADHAVARAYA *v.* TIRTHA SAMI.... **I. L. Rep. 1 Mad. 307.**

—— Immoral Consideration.

See **Gift.**

—— Of Immoveable Separate Property by Hindu Husband to Wife.

See **Hindu Law—Gift. 3.**

RUDR NARAIN SING *v.* RUP KUAR. **I. L. Rep. 1 All. 734.**

—— Of *Mushâ.*

See **Mahomedan Law—Gift. 1. 2.**

AMEEROONISSA KHATOON *v.* ABEDOONISSA KHATOON ..... **L. Rep. 2 I. A. 87.**

JIVAN BAKSH *v.* IMTIAZ BEGUM..... **I. L. Rep. 2 All. 93.**

—— *Immoral Consideration.*] In 1870 *H.* made a gift of certain immoveable property to *W.*, who was his mistress, but lived with him as his wife, "on condition of her continuing to be his wife and remaining obedient to him, her husband." *W.* took possession of the property under the gift, and held it for eight years, when

GIFT—*contd.*

a creditor of *H.*, under a decree enforcing a debt contracted by H. subsequently to the gift, sued, amongst other things, for a declaration that the gift was invalid, as it had been made for an illegal consideration, *viz.*, the future cohabitation of *W.* and *H.* :—

Held that, assuming that the consideration for the gift was illegal, in the absence of fraud, the gift could not be set aside so many years after *W.* had acquired possession thereunder. *Ayerst* v. *Jenkins* (L. Rep. 16 Eq. 275) followed. LACHMI NARAIN *v.* WILAYTI BEGAM. *Spankie* and *Oldfield*, JJ...**I. L. Rep. 2 All. 433, 1879.**

GIFT TO A., HIS CHILDREN AND GRAND-CHILDREN, CONFERS ABSOLUTE ESTATE.

See **Grant of Talook.**

BOOBUN MOHINI *v.* HARRISH CHUNDER ... **L. Rep. 5 I. A. 138 ; I. L. Rep. 4 Cal. 23.**

GIFT TO A CLASS—Lapsed Bequest—Qualifications applicable to Original Share not extended to Accrued Share in absence of neceessary Implication.

See **Will. 5.**

MASEYK *v.* FERGUSSON...**I. L. Rep. 4 Cal. 670.**

—— Postponement of Period of Distribution—Members of Class born after Testator's Death and before Period of Distribution participate.

See **Will. 5.**

MASEYK *v,* FERGUSSON...**I. L. Rep. 4 Cal. 670.**

GIFT TO CLASS, SOME OF WHOM NOT IN EXISTENCE AT TESTATOR'S DEATH.

See **Hindu Law—Will. 4. 7.**

KHERODEMONEY DOSSEE *v.* DOORGAMONEY DOSSEE.....**I. L. Rep. 4 Cal. 455.**

SOUDAMONEY DOSSEE *v.* JOGESH CHUNDER DUTT...**I. L. Rep. 2 Cal. 262.**

And *see* TREEPOORASOONDERY *v.* DEBENDRONATH **I. L. Rep. 2 Cal. 45, p. 53.**

Under **Limitation. 63.**

Digitized by Google

GIFT WITH CONDITION RESTRAINING PARTITION OR ENJOYMENT.

See **Hindu Law—Will. 1.**

MOKOONDO LALL *v.* GONESH CHUNDER...I. L. Rep. 1 Cal. 104.

GIFT BY MEMBER OF UNDIVIDED FAMILY AFTER SALE OF UNDIVIDED SHARE OF OTHER MEMBERS.

See **Hindu Law—Gift. 2.**

BALLABH DAS *v.* SUNDER DAS...I. L. Rep. 1 All. 429.

GIFT TO PERSON DESIGNATED.

See **Hindu Law—Will. 6.**

NIDHOOMONI *v.* SARODA PERSHAD. L. Rep. 3 I. A. 253.

GIFT OF RESIDUE TO A CLASS—Postponement of Period of Distribution—Act X. of 1865, §§ 98, 101, 102.

See **Will. 4. 5.**

MASEYK *v.* FERGUSSON...I. L. Rep. 4 Cal. 304, 670.

GIFT OF SELF-ACQUIRED PROPERTY—To one Son to exclusion of others—valid.

See **Hindu Law—Gift. 1.**

SITAL *v.* MADHO...I. L. Rep. 1 All. 394.

GIVING TIME TO PRINCIPAL DEBTOR—Acceptance of Interest in advance—Discharge of Surety.

See **Principal and Surety. 2.**

PROTAB CHUNDER DASS *v.* GOUR CHUNDER ROY...I. L. Rep. 4 Cal. 132.

—— Execution against Surety—Interest.

See **Principal and Surety. 3.**

RAMANUND *v.* CHOWDHRY SOONDER NARRAIN...I. L. Rep. 4 Cal. 331.

GOOD BEHAVIOUR—Security for.

See **Security for Good Behaviour.**

EMPRESS *v.* DEDAR SIRCAR.....I. L. Rep. 2 Cal. 384.

See **Whipping Act VI. of 1864, §§ 2 & 3.**

EMPRESS *v.* PARTAB...I. L. Rep. 666.

GOOD FAITH.

See the cases under **Act XVIII. of 1850.**

—— "In good faith" (Act IX. of 1871, § 10, and Sched. II., Art. 134).

See **Hindu Law—Will. 10.**

MANIKLAL *v.* MANCHERSHI.....I. L. Rep. 1 Bom. 269.

—— Defamation—Onus of Proving.

See **Defamation.**

SIBHO PROSAD PANDAH.....I. L. Rep. 4 Cal. 124.

—— Libel.

See **Libel.**

SHEPHERD *v.* TRUSTEES OF PORT OF BOMBAY.....I. L. Rep. 1 Bom. 477.

GOODS OBTAINED BY MEANS OF AN OFFENCE OR FRAUD—In Calcutta—Pledge to Defendant resident beyond Jurisdiction.

See **Jurisdiction. 12.**

KARTIK CHURN *v.* GOPAL KISTO... I. L. Rep. 3 Cal. 264.

GOODS PLEDGED BY INSOLVENT AND RE-DELIVERED TO HIM ON COMMISSION SALE.

See **Insolvency. 5.**

In re MURRAY.....I. L. Rep. 3 Cal. 58.

GOSAVIS—Custom amongst.

See **Custom amongst Gosavis.**

And *see* **Hindu Law — Inheritance —Illegitimate Son. 5.**

NARRAYAN *v.* LAVING...I. L. Rep. 2 Bom. 140.

GOTRAJA SAPINDA—Right of Widows of—to inherit.

See **Hindu Law — Inheritance — Widow. 3.**

LALLUBHAI *v.* MANKUVARBAI...I. L. Rep. 2 Bom. 368.

GOVERNMENT CURRENCY NOTE — *Theft of—Title of Original Owner—Appealable Order—Criminal Procedure Code, Act X. of* 1872, §§ 418 *and* 419—*Cashing a Currency Note—Sale—Contract Act IX. of* 1872, §§ 74, 76 *and* 108.] A Government currency note was stolen from *A.* and cashed by *B.* in good faith for *C.* On *C.*'s conviction for theft, the Magistrate

Digitized by Google

GOVERNMENT CURRENCY NOTE—*contd.*

ordered the note to be given to *B*. *A*. appealed to the Session Judge, who was of opinion that he was not competent to interfere as a Court of Appeal under § 419 of the Criminal Procedure Code, but submitted the case for the orders of the High Court.

Held, that the Sessions Judge might have disposed of the case under § 419 of the Criminal Procedure Code the words "Court of Appeal" in that section are not necessarily limited to a Court before which an appeal is at the moment pending.

Held also, that the provisions of §§ 76 and 108 of the Contract Act IX. of 1872 did not apply to the case. The change of a Government currency note for cash is not a contract of sale, and as the note came honestly into *B*.'s hands the order of the Magistrate was right. EMPRESS *v.* JOGESSUR MOCHI. *Ainslie* and *McDonnell*, JJ...**I. L. Rep. 3 Cal. 379 ; 1 Cal. Rep. 339, 1878.**

GOVERNMENT FERRY — Lease of — Covenant not to underlet or assign—Admission of Partner.

See **Illegal Contract.**

GOURI SHANKAR *v.* MUMTAZ ALI KHAN...**I. L. Rep. 2 All. 411.**

GOVERNMENT LAND.

See **Bombay Act I. of 1865, § 35.**

COLLECTOR OF THANA *v.* DADABHAI. **I. L. Rep. 1 Bom. 352.**

GOVERNMENT REVENUE PAID DURING WRONGFUL POSSESSION—Right to recover—Set-off—Suit for Mesne Profits.

See **Right to recover Government Revenue paid during Wrongful Possession.**

TILUCK CHAND *v.* SOUDAMINI DASI. **I. L. Rep. 4 Cal. 566.**

GOVERNOR-GENERAL IN COUNCIL—Legislative Powers of.

See **Legislative Powers of the Governor-General in Council. 1, 2.**

EMPRESS *v.* BURRAH...**I. L. Rep. 3 Cal. 63 ; I. L. Rep. 4 Cal. 172 ; L. Rep. 5 I. A. 178 ; L. Rep. 3 App. Ca. 889.**

GRAIN RENT—Arrears of—Suit for Money Equivalent.

See **Act XVIII. of 1873, § 93. 1.**

TAJUDDIN *v.* RAM PARSHAD...**I. L. Rep. 1 All. 217.**

GRANDSON OF FATHER'S BROTHER—Right of—to Certificate under Act XXVII. of 1860 in preference to Brother's Daughter's Son.

See **Certificate to collect Debts. 1.**

OODOYCHARN MITTER...**I. L. Rep. 4 Cal. 411.**

GRANT DURING CONTINUANCE OF LESSOR'S INTEREST — *Construction of Pottah—Mokurruri Pottah.*] A pottah having been granted in 1808 to the respondent's ancestor "to continue during the term of the Mokurruri" of the grantor; it appeared that the grantor's Kabulayat, dated in 1788, contained the following clause:—"If the present officers of the British Government, or any authority who may come hereafter, do not accept my Mokurruri lease to be hereditary, I acknowledge that this Kabulayat is only for one year, thereafter it shall be cancelled." It also appeared that this lease had not been put an end to by Government, but had been allowed to go on.

In a suit by the appellants, who derived title from the said grantor, to annul the mokurruri tenure claimed by the respondents:—

Held, that it was evidently the intention of the parties that the grant should endure during the term of the grantor's interest. If it can be ascertained definitely what that term is, the rule of construction that a grant of an indefinite nature enures only for the life of the grantee would not apply. If a grant be made to a man for an indefinite period, it enures, generally speaking, for his lifetime, and passes no interest to his heirs, unless there are some words showing an intention to grant an hereditary interest. That rule of construction does not apply if the term for which the grant is made is fixed or can be definitely ascertained. Though, therefore, the grantor's lease of 1788 may not have been strictly a mokurruri, yet it must be regarded, as long as it went on, as an hereditary lease, a maurasi pottah. That hereditary interest he granted by the pottah of 1808 to the respondent's ancestor, was not of an indefinite nature, enuring only for the life of the grantee, but passed to his heirs the whole interest of the

Digitized by Google

GRANT DURING CONTINUANCE OF LESSOR'S INTEREST—*contd.*

grantor. BABOO LEKHRAJ KOY *v.* KUNHYA SINGH.....**L. Rep. 4 I A. 223, 1877 ; I. L. Rep. 3 Cal. 210.**

GRANT OF INDEFINITE NATURE.

See **Grant during Continuance of Lessor's Interest.** *Supra.*

GRANT OF JAGHIRE BY THE EAST INDIA COMPANY — *Construction — Surrounding Circumstances — Jaghire primâ facie Life Estate.*] In the year 1800, on the cession of Surat to the East India Company, the then Governor of Bombay granted a *sunnud* to one *N. K.*, which after reciting that whereas by virtue of a compact and convention made between the Government of the East India Company and the then Nawab of Surat, the management and collection of the land revenue, &c., of Surat, and the administration of the city had been delivered over to the East India Company, proceeded as follows:—"Under these circumstances it has appeared incumbent and proper in the view of the Chief Authority (Hoozoor) that some suitable provision should be made as a subsidy for the expenses of the abovenamed *N. K.* and his descendants; that is to say, by reason of close relationship, and being descended from the same ancestors as those of the Nawabs of the Maritime City of Surat. Therefore, this has been settled by the instrumentality of the Governor who is the ruler of the Maritime City of Bombay, &c., as follows: That *N. K.*, with his children or descendants after the deduction of the income of the jaghire according to the particulars given at the foot hereof, that is now in the possession of the abovenamed *N. K.*, shall receive from the valiant English Company's Government the sum of Rs. 24,000 per annum by four equal instalments. Hereafter should it be necessary for the Government to resume the abovementioned *jaghire*, given on account of maintenance or otherwise, the amount of the income thereof shall be received by the abovenamed *N. K.*, and his children or descendants, from the Treasury of the valiant English Company."

M., a grandson and successor of *N.K.*, mortgaged some of the *mehals* comprised in the *sunnud*, the rents of which were thereafter collected by the mortgagee, and subsequently by the Government. In an action brought after *M.*'s death

GRANT OF JAGHIRE BY THE EAST INDIA COMPANY—*contd.*

against *F.* (his sister and successor), the Government, and certain descendants of *M.*'s sisters, for payment of the balance due upon the mortgage, it was contended that *M.* had only a life estate in the mortgaged *mehals*.

Held, that the construction of the *sunnud* might be aided by a consideration of the surrounding circumstances, and of the occasion on which it was granted, and that according to the true construction of the *sunnud*, and having regard to its object and terms, each of the descendants of *N. K.* who took the *jaghire* took it for life only.

A *jaghire* must be taken *primâ facie* to be an estate for life only, although it may possibly be granted in such terms as to make it hereditary...GULABDAS JAGJIVANDAS *v.* COLLECTOR OF SURAT...**L. Rep. 6 I. A. 54 ; 1878 ; I. L. Rep. 3 Bom. 186.**

GRANT OF LETTERS OF ADMINISTRATION WITH WILL ANNEXED—After Seven Days from Testator's Death may be made.

See **Indian Succession Act X. of 1865, § 258.**

WILSON...**I. L. Rep. 1 Cal. 149.**

GRANT IN LIEU OF MAINTENANCE—Resumption of—Limitation.

See **Limitation. 8.**

PITAMBER *v.* NILMONY...**I. L. Rep. 3 Cal. 793.**

GRANT OF MONEY IN LIEU OF MAINTENANCE—Alienation by Will of Lands purchased with—valid.

See **Hindu Law—Alienation by Widow. 4.**

And **Hindu Law—Will. 8.**

NELLAIKUMARU *v.* MARAKATHAMMAL.....**I. L. Rep. 1 Mad. 166.**

GRANT BY WIFE DURING ABSENCE OF HUSBAND—*Possession for Twelve Years by Grantee under Invalid Grant—Adverse Possession.*] A wife, during the prolonged absence of her husband, who was erroneously supposed to be dead, acting in excess of the limited powers of a wife in possession of her absent hus-

Digitized by Google

GRANT BY WIFE DURING ABSENCE OF HUSBAND—*contd.*

band's property, made a mawrasi grant in 1855 of a portion of her husband's estate, reserving an annual fixed rent of Rs. 22. The grantee entered into and remained in possession for upwards of twelve years:—*Held*, that the position of the grantee was not that of a lessee, and that his possession (although in its inception an act of trespass against the husband), having continued for twelve years, had perfected his title to the lands. One who holds possession on behalf of another does not, by mere denial of that other's title make his possession adverse, so as to give himself the benefit of the Statute of Limitation. BEJOY CHUNDER BANNERJEE *v.* KALLY PROSONNO MOOKERJEE. *Markby* and *Prinsep*, JJ.....**I. L. Rep. 4 Cal. 327, 1878.**

GRANT OF TALOOK — *Construction of Sanad—Will.*] *S. C.*, a Hindu, granted a talook to his sister *K.*, by a sanad in the following terms:—"You are my sister. I accordingly grant you, as a talook for your support, the three villages *H.*, *F.*, and *K.*, belonging to my zemindary, with all rights appertaining thereto, at a *tahut jamma* of Rs. 361. Being in possession of the lands and paying rent according to the *tahut jamma*, do you and the generation born of your womb successively (*santan srene kreme*) enjoy the same. No other heirs of yours shall have right or interest." At the date of the sanad *K.* had one child, a daughter, *C.* She afterwards had a son, who died in her lifetime without issue, but whose widow, by his permission, adopted, after his death, a son, *C. L.* *K.* held undisputed possession of the talook during her lifetime, and by her will devised it to *C.*, her daughter, and *C. L.*, her grandson by adoption, in equal moieties.

On *K.*'s death *H. C.*, as heir of his father *S. C.*, took possession of the talook. Whereupon *C.* and *C. L.*, claiming under the will of *K.*, sued for possession:—

Held, by the Court of first instance, that *C.* took an absolute estate under the sanad on the death of her mother, *K.*, but that having elected to take under her mother's will, and to admit the co-plaintiff *C. L.* to a half-share in the estate, both plaintiffs were entitled to maintain the action.

Held, by the High Court on appeal, that *C.* having been born before the date of the sanad, took, under it, a life interest in the talook in succession to the life interest of her mother.

GRANT OF TALOOK—*contd.*

But that as the plaintiffs had not sued in respect of the life interest, but claimed under the will of *K.*, which she was incompetent to make, the suit must be dismissed.

Held by the Privy Council, that the earlier words of the sanad when read together were to be taken as conferring an absolute estate on *K.*, and that the concluding words, "no other heir of yours shall have right or interest," must be read as referring to the time of *K.*'s death; and that their effect was to make the absolute estate before given defeasible in the event of a failure of issue living at the time of her death, in which event the estate was to revert to the donor and his heirs; but that, as this event had not occurred, *K.* took an absolute estate, which she could dispose of by will, and that, therefore, the plaintiffs were entitled to succeed. BHOOBUN MOHUN DEBIA *v.* HARRISH CHUNDER CHOWDRY...**I. L. Rep. 4 Cal. 23, 1878; L. Rep. 5 I. A. 138; 2 Cal. Rep. 339.**

GRANT OF VILLAGE IN INAM JOINTLY TO MEMBERS OF UNDIVIDED FAMILY.

See **Hindu Law—Undivided Family. 1.**

RADHABAI *v.* NANARAV.....**I. L. Rep. 3 Bom. 151.**

GRANTEE OF MORTGAGOR—Priority of Purchaser at Sale in Execution of Decree on Mortgage over Purchaser from.

See **Mortgage. 6.**

MUTHORA NATH *v.* CHUNDERMONEY...**I. L. Rep. 4 Cal. 817.**

GRAZING GROUNDS OF VILLAGE—Right to graze Cattle on.

See **Right of Free Pasturage.**

COLLECTOR OF THANA *v.* BAL PATEL...**I. L. Rep. 2 Bom. 110.**

GREAT-GRANDSON OF GRANDFATHER OF DECEASED HINDU—Right of—to inherit.

See **Hindu Law—Inheritance—Brother's Daughter's Son.**

JUGGUT NARRAIN *v.* THE COLLECTOR OF MANBHOOM.....**I. L. Rep. 4 Cal. 413, n.**

Digitized by Google

GREAT-GRANDSON OF DECEASED'S GREAT - GREAT - GRANDFATHER—RIGHT OF, TO INHERIT IN PREFERENCE TO FATHER'S SISTER'S SON.

See **Hindu Law—Inheritance—Father's Sister's Son.**

THAKOOR JEEBNATH SINGH *v.* THE COURT OF WARDS...**L. Rep. 2 I. A. 163.**

GRIEVOUS HURT—*Penal Code*, §§, 321, 322—*Woman with Infant in Arms—Blow aimed at Woman causing Child's Death.*] An accused struck a woman, carrying an infant in her arms, violently over the head and shoulders. One of the blows fell on the child's head, causing death :—

Held, that the accused was guilty of grievous hurt in respect of the infant. EMPRESS *v.* SAHAE RAE. *Markby* and *Prinsep*, JJ...**I. L. Rep. 3 Cal. 623; 2 Cal. Rep. 304, 1878.**

S. C. under **Criminal Procedure Code, Act X. of 1872, § 263. 4.**

GROUNDS FOR RE-HEARING OF APPEAL TO THE PRIVY COUNCIL.

See **Practice—Privy Council. 4.**

PERTAB NARAIN *v.* SUBHAO KOOER...**I. L. Rep. 4 Cal. 184.**

GROWING CROPS—Pass on Sale of Under-Tenure, unless excepted specially or by Custom.

See **Beng. Act VIII. of 1869, § 66.**

AFATOOLLA *v.* DWARKA NATH... **I. L. Rep. 4 Cal. 814.**

GUARANTEE.

See **Appropriation of Payments.**

NICHOLLS *v.* WILSON...**I. L. Rep. 4 Cal. 560.**

GUARDIAN—Alienation by Certificated and Uncertificated Guardian.

See the cases under **Alienation by Guardian.**

See **Mahomedan Law—Sale by Guardian.**

HASAN ALI *v.* MEHDI HUSSAIN...**I. L. Rep. 1 All. 583.**

GUARDIAN—*contd.*

See **Mortgage. 29. 30.**

ABHASEE BEGUM *v.* MOHARANEE RAJROOP.....**I. L. Rep. 4 Cal. 33.**

DEBI DUTT *v.* SUBOODRA BIBEE... **I. L. Rep. 2 Cal. 283.**

See **Review. 10.**

MADHO DAS *v.* RUKMAN SERAH SINGH..... **I. L. Rep. 2 All. 287.**

See **Sale by Guardian.**

SOONDER NARAIN *v.* BENNUD RAM ..... **I. L. Rep. 4 Cal. 76.**

—— Appointment of—to Minor Children of Deceased Member of Undivided Hindu Family.

See **Certificate of Administration of Minor's Estate.**

GURACHARYA *v.* SVAMIRAYACHARYA...**I. L. Rep. 3 Bom. 431.**

—— Legal—Custody of Minor Sister—Prostitute.

See **Mahomedan Law—Guardian.**

ABASI *v.* DUNNE...**I. L. Rep. 1 All. 598.**

—— Power to appoint—after Previous Refusal.

See **Act IX. of 1861, § 1.**

NEHALO *v.* NAWAL...**I. L. Rep. 1 All. 428.**

—— Unauthorized Alienation by—Purchaser's Lien.

See **Lien. 1.**

KUVARJI *v.* MOTI HARIDAS...**I. L. Rep. 3 Bom. 234.**

GUARDIAN, APPOINTMENT OF—*Infant—Power of High Court—Application by Petition without Suit.*] On an application made on petition without suit for the appointment of a guardian of the person and property of an infant, the Court Receiver was appointed Receiver, and the property was ordered to be handed over to him to sell it and invest the proceeds in Government paper, and the matter was referred to the Judge in Chambers for inquiry as to the proper person to be appointed guardian. *In the matter of* BITTAN. *Macpherson*, J....**I. L. Rep. 2 Cal. 357, 1877.**

Digitized by Google

GUARDIAN AD LITEM—Effect of Appointment of—on Age of Majority of Minor.

See **Majority Act IX. of 1875, § 3.**

SUTTYA GHOSAL *v.* SUTTYANAND... **I. L. Rep. 1 Cal. 388.**

GUARDIANSHIP—Kidnapping Minor from Lawful.

See **Kidnapping.**

EMPRESS *v.* UMSADBAKSH...**I. L. Rep. 3 Bom. 178.**

GUARDIANSHIP OF ADOPTED SON.

See **Hindu Law—Guardianship.**

LAKSHMIBAI *v.* SHRIDHAR VASADEV TAKLE...**I. L. Rep. 3 Bom. 1.**

GURU—Right of *Chela* to succeed to.

See **Hindu Law — Inheritance — Saniasis.**

MADHO DAS *v.* KAMPTA DAS...**I. L. Rep. 1 All. 539.**

GUZASHTHA KASHT.

See **Beng. Act VIII. of 1869.**

LAL SAHOO *v.* DEO NARAIN SINGH. **I. L. Rep. 3 Cal. 781.**

HABEAS CORPUS, WRIT OF.

—— Privilege from Arrest — Decree of Small Cause Court—Affidavits—Power of High Court to inquire into Validity of Commitment by Small Cause Court.

See **Privilege from Arrest.**

See **Small Cause Court—Presidency Town. 5.**

OMRITOLALL DEY.....**I. L. Rep. 1 Cal. 78.**

HALF-BROTHER — Separated — Right of, to inherit—Full Sister preferred to.

See **Hindu Law — Inheritance — Sister. 1.**

SAKHARAM *v.* SITABAI.....**I. L. Rep. 3 Bom. 353.**

—— Succession of — in Undivided Family — Dayabhaga.

See **Hindu Law — Inheritance — Brother. 1. 2.**

RAJKISHORE *v.* GOBIND CHUNDER. **I. L. Rep. 1 Cal. 27; S. C. 24 W. Rep. 234; L. Rep. 4 I. A. 153, n.**

SHEO SOONDARY *v.* PIRTHEE SINGH. **L. Rep. 4 I. A. 147.**

HARBOURING A MARRIED WOMAN WHO HAS LEFT HER HUSBAND.

See **Restitution of Conjugal Rights.**

YAMUNABAI *v.* N. M. PENDSE...**I. L. Rep. 1 Bom. 164.**

See **Civil Procedure Code, Act VIII. of 1859, § 200.**

AJNASI KUAR *v.* SURAJ PRASAD... **I. L. Rep. 1 All. 501.**

HAT-CHITTA—Stamp on Entry in.

See **Stamp. 5.**

BROJENDER COOMAR *v.* BROMOMOYE .....**I. L. Rep. 4 Cal. 885.**

HAVALAT—Entering a — with intent to convey Food to a Prisoner.

See **Prisons Act XXVI. of 1870.**

EMPRESS *v.* LALAI.....**I. L. Rep. 2 All. 301.**

HEREDITARY KAZI—Grant of Office of—Custom.

See **Kazi.**

DAUDSHA *v.* ISMAILSHA.....**I. L. Rep. 3 Bom. 72.**

JAMAL *v.* JAMAL.....**I. L. Rep. 1 Bom. 633.**

HEREDITARY OFFICE—Dancing Girl.

See **Dancing Girl.**

KAMALAM *v.* SADAGOPA SAMI...**I. L. Rep. 1 Mad. 356.**

HEREDITARY OFFICER—Right to officiate as—Suit for Declaration of.

See **Declaratory Decree. 17. 18.**

CHINTO *v.* LAKSHMIBAI.....**I. L. Rep. 2 Bom. 375.**

KHANDO *v.* APPAJI...**I. L. Rep. 2 Bom. 370.**

HEREDITARY TENURE—Polliem.

See **Polliem. 1. 2.**

THE COLLECTOR OF TRICHINOPOLY *v.* LEKHAMANI.....**L. Rep. 1 I. A. 282.**

OOLAGAPA CHETTY *v.* ARBUTHNOT. **Ibid. 268.**

Digitized by Google

HEREDITABLE RIGHTS OF EMANCIPATOR OF SLAVE—Mahomedan Law—Willa.

See **Act V. of 1843.**

SAYAD MIR UJMUDIN *v.* ZIA-UL-NISSA...**L. Rep. 6 I. A. 137.**

HIGH COURT — Appeal to—from Division Bench where Judges differ, not confined to Points of Difference.

See **Appeal—Civil. 17.**

RAM DIAL *v.* RAM DAS.....**I. L. Rep. 1 All. 181.**

—— Appeal to—in Suits tried in Sonthal Pergannas—none.

See **Jurisdiction. 11.**

SURDHAREE LOLL *v.* MUNSOOR ALLY KHAN.....**I. L. Rep. 3 Cal. 298.**

HIGH COURT CRIMINAL PROCEDURE ACT X. OF 1875—§§ 32 *to* 37—*Constitution of Jury—Hindu Prisoner.*] A prisoner, not being a European British subject, who is not charged jointly with a European British subject, is not entitled, under the provisions of the High Court Criminal Procedure Act (X. of 1875), to be tried by a jury, of which, at least, five persons shall not be European British subjects. REG. *v.* LALLUBHAI GOPALDAS. *Westropp*, C.J., *Sargent* and *Green*, JJ.....**I. L. Rep. 1 Bom. 232, 1876.**

2.——§ 33.—*Constitution of Jury.*] Under the provisions of §§ 33 and 39 of the High Court Procedure Act (X. of 1875), and the Rules of the Supreme Court made in 1842 for the balloting for petty juries (which have never been abolished), the persons who are to be "chosen by lot" to form the jury must be selected from the entire number of persons summoned to act as jurors, and this selection must be effected by putting the names of the persons of all nationalities, summoned to act as jurors, into one box, and drawing out nine names indiscriminately. REG. *v.* VITHALDAS PRANJIVANDAS. *Bayley*, J. **I. L. Rep. 1 Bom. 462, 1876.**

1. —— § 147.—*Transfer of Case to High Court — Mandamus.*] A charge was made against the accused of using criminal force, under § 141 of the Penal Code. The Police Magistrate heard the evidence for the prosecution, and, without disbelieving it, decided that it did not amount to the offence charged:—

HIGH COURT CRIMINAL PROCEDURE ACT X. OF 1875—*contd.*

Held, that assuming that an error of law had been committed, the High Court had no power to issue a mandamus to the Magistrate to compel him to commit; it was not a case where the Magistrate had declined to exercise jurisdiction; he had exercised jurisdiction and heard the case.

Held also, that it was not a case which the High Court could transfer under § 147 of Act X. of 1875, as such transfer, if made, would be, not for the purpose of quashing or affirming a conviction or other proceedings, but for the purpose of hearing the case and taking the evidence of witnesses, and determining whether a case for a committal had been made out; and the section was not wide enough to enable the High Court to do that. MALCOLM *v.* GASPER. *White*, J.....**I. L. Rep. 2 Cal. 278, 1877.**

2.—— § 147.—*Acquittal—Appeal.*] § 147 of Act X. of 1875 does not provide for an appeal against an acquittal. It contemplates the tranfer of a case before disposal, or interference on behalf of persons aggrieved or injured by an order of the Magistrate, or where there has been a conviction. THE CORPORATION OF CALCUTTA *v.* BHEECUNRAM NAPITT. *Macpherson*, J...**I. L. Rep. 2 Cal. 290, 1877.**

3.—— § 147.—*Refund of Fine on Quashing Conviction—Notes of Evidence taken by Magistrate—Affidavit—Transfer of Case to High Court.*] The High Court has no power, under § 147 of the High Court Criminal Procedure Act, to order a fine to be refunded on quashing a conviction.

The Court in this instance decided whether the case should be transferred under § 147 on the notes of the evidence taken by the Magistrate. REG. *v.* HADJEE JEEBUN BUX. *Pontifex*, J.....**I. L. Rep. 1 Cal. 354, 1876.**

[*Note.*—Affidavits were used in this case mentioning evidence which did not appear on the Magistrate's notes. Their use was objected to, but no decision appears to have been given on the point.]

4.——§ 147.—*Transfer of Case to High Court—Notice to Prosecutor—Penal Code*, §§ 292, 294—*Specific Charges—Procedure on Transfer to High Court.*] When a conviction has been arrived at, and the petitioner is actually suffering imprisonment, it is within the discretion of

Digitized by Google

HIGH COURT CRIMINAL PROCEDURE ACT X. OF 1875—*contd.*

the High Court to order, for sufficient *primâ facie* cause shown on the application of the prisoner, under § 147 of Act X. of 1875, that the case be removed, without notice to the Crown.

Semble—A charge under §§ 292 and 294 of the Penal Code should be made specific in regard to the representations and words alleged to have been exhibited, uttered, and to be obscene. And the Court, in its decision of the matter, should state distinctly what were the particular representations and words which it finds in the evidence the accused persons had exhibited and uttered, and which it judges to be obscene within the meaning of those sections.

The Magistrate in this case not having given such specific decision, *Phear*, J., said, p. 359—"Had the case remained as the Magistrate's book represents it, we should have been reduced to the alternative of practically trying the case *de novo*, or of dismissing it, on the ground that the Magistrate had come to no finding on which his conviction could be sustained." REG. *v.* UPENDRONATH DOSS. *Phear* and *Markby*, JJ... **I. L. Rep. 1 Cal. 356, 1876.**

5. ——§ 147.—*Power of Revision—Presidency Magistrates' Act IV. of* 1871.] The High Court sitting as a Court of Appeal to hear an appeal from a conviction and sentence by a Magistrate, under the Presidency Magistrates' Act (IV. of 1877), although such appeal may be dismissed as not being provided for by that Act, will interfere under § 147 of the High Court Criminal Procedure Act (X. of 1875) when it appears necessary for the ends of justice; and, the record being before it, will proceed to try and dispose of the case as a case transferred under that section. *In the matter of* JOTHARAM DAVAY. *Innes* and *Mutuswamy Ayyar*, JJ...**I. L. Rep. 2 Mad. 30, 1878.**

S. C. under **Housebreaking.**

HIGH COURT, JURISDICTION OF—Breach of Contract by Railway Company to deliver Goods within.

See **Jurisdiction. 14.**

MUHAMAD ABDUL KADAR *v.* E. I. RY. CO...**I. L. Rep. 1 Mad. 375.**

HIGH COURT, JURISDICTION OF—*contd.*

—— Goods obtained by Offence or Fraud within—Pledge of Goods to Defendant without—Leave to sue.

See **Jurisdiction. 12.**

KARTIK CHURN *v.* GOPAL KISTO... **I. L. Rep. 3 Cal. 264.**

—— To Imprison for Contempt of Court.

See **Imprisonment for Contempt.**

MARTIN *v.* LAWRENCE...**I. L. Rep. 4 Cal. 655.**

—— In respect of Offences committed in Foreign Territory (Cyprus).

See **Offence committed at Cyprus.**

EMPRESS *v.* SARMUKH SINGH... **I. L. Rep. 2 All. 218.**

—— In respect of Offence committed in Foreign Territory (Zanzibar).

See **Offence committed in Foreign Territory.**

EMPRESS *v.* DOSSAJI...**I. L. Rep. 3 Bom. 334.**

—— In Matters relating to Revenue.

See **Jurisdiction. 13.**

COLLECTOR OF SEA CUSTOMS, MADRAS *v.* PANNIAR CHITHAMBARAM...**I. L. Rep. 1 Mad. 89.**

—— Power of the Legislature over.

See **Act VI. of 1874, § 5.**

FEDA HOSSEIN...**I. L. Rep. 1 Cal. 431.**

See **Legislative Power of the Governor General in Council. 1. 2.**

EMPRESS *v.* BURRAH...**I. L. Rep. 3 Cal. 63; I. L. Rep. 4 Cal. 172; L. Rep. 5 I. A. 128; L. Rep. 3 App. Ca. 889.**

—— Over Small Cause Court.

See **Small Cause Court—Presidency Town. 5.**

OMRITOLALL DEY...**I. L. Rep. 1 Cal. 78.**

Digitized by Google

HIGH COURT, JURISDICTION OF — *contd.*

—— Suit by Creditor to have Trusts carried out of Deed of Trust giving Trustees Power to sell Lands in Mofussil.

See **Suit for Land. 2.**

DELHI AND LONDON BANK *v.* WORDIE...I. L. Rep. 1 Cal. 249.

—— Suit for Injunction to restrain Working Mines on Defendant's Land—Disputed Boundaries.

See **Suit for Land. 1.**

E. I. RY. Co. *v.* BENGAL COAL CO...I. L. Rep. 1 Cal. 95.

—— To Enlarge Time for Deposit of Costs.

See **Act VI. of 1874, § 11.**

SOORJMUKHI KOER...I. L. Rep. 2 Cal. 272.

—— To Grant Special Permission to deposit Money for Costs of Appeal to Privy Council after Expiration of Time.

See **Act VI. of 1874, § 8.**

LALLA GOPEE CHUND...I. L. Rep. 2 Cal. 128.

—— To Mitigate Penalty of Forfeited Recognizance Bond.

See **Recognizance.**

EMPRESS *v.* NURHUL HUQQ...I. L. Rep. 3 Cal. 757.

—— To Order Arrest of Person acquitted—pending an Appeal against his Acquittal.

See **Criminal Procedure Code, Act X. of 1872, § 272. 3. 4.**

REG. *v.* GOBIN TEWARI .....I. L. Rep. 1 Cal. 281.

EMPRESS *v.* MANGU...I. L. Rep. 2 All. 340

See **Evidence 6.**

EMPRESS *v.* KARIM BAKSH...I. L. Rep. 2 All. 386.

HIGH COURT—POWER OF—ON CASE RESERVED OR CERTIFIED, TO CONSIDER THE MERITS.

See **Evidence. 13.**

REG. *v.* HURRIBOLE CHUNDER GHOSE...I. L. Rep. 1 Cal. 207.

See **Power of the High Court on Case Reserved or Certified to consider the Merits of the Case.**

REG. *v.* PITAMBAR JINA...I. L. Rep. 2 Bom. 61.

HIGH COURT—POWER OF—AS COURT OF APPEAL FROM PRESIDENCY MAGISTRATE — To interfere under § 147, Act X. of 1875.

See **High Court Criminal Procedure Act X. of 1875, § 147. 5.**

JOTHARAM DAVAY...I. L. Rep. 2 Mad. 30.

HIGH COURT — POWER OF — AS A COURT OF REFERENCE—To Alter Finding.

See **Criminal Procedure Code, Act X. of 1872, § 288.**

REG. *v.* BALAPPA.....I. L. Rep. 1 Bom. 639.

—— To Consider Jurisdiction of Sessions Judge after Order by Division Bench for Trial of the Accused.

See **Criminal Procedure Code, Act X. of 1872, § 297. 7.**

EMPRESS *v.* SARMUKH SINGH...I. L. Rep. 2 All. 218.

HIGH COURT—POWER OF—AS COURT OF REVISION—To Interfere with an Acquittal.

See **Criminal Procedure Code, Act X. of 1872, § 297. 1. 3. 5. 6.**

HARDEO...I. L. Rep. 1 All. 139.

AURIOKAM ...I. L. Rep. 2 Mad. 38.

EMPRESS *v.* MIYAJI...I. L. Rep. 3. Bom. 150.

EMPRESS *v.* DWARKANATH...I. L. Rep. 2 Cal. 399.

—— To Interfere with Magistrate's Discretion as to Amount of Security to keep the Peace.

See **Criminal Procedure Code, Act X. of 1872, §§ 294 and 297.**

JUGGUT CHUNDER CHUKKERBUTTY. I. L. Rep. 2 Cal. 110.

—— To Quash Committal by Sessions Judge.

See **Jurisdiction. 16a.**

EMPRESS *v.* LACHMAN SINGH...I. L. Rep. 2 All. 398.

—— To Set Aside Order of Magistrate directing Detention of Persons Arrested, after Acquittal, pending Appeal from Acquittal.

See **Criminal Procedure Code, Act X. of 1872, § 297. 2.**

REG. *v.* GHOLAM ISMAIL.....I. L. Rep. 1 All. 1.

Digitized by Google

HIGH COURT—POWER OF—ON SPECIAL APPEAL, TO CONSIDER THE EVIDENCE.

See **Contract. 14.**

NANAK RAM *v.* MEHIN LAL...I. L. Rep. 1 All. 483.

HIGH COURT—RULES OF—Rule 24 of 23rd August 1866 (Bombay).

See **Power of Directors to bind Company by Bill of Exchange.**

THE FLEMING S. & W. Co....I. L. Rep. 3 Bom. 439.

—— Rule 4 of Calcutta—22nd June 1875.

See **Probate. 2.**

SHAMACHURN MULLICK...I. L. Rep. 1 Cal. 52.

—— Rules 4 and 5 of Madras—5th July 1866.

See **Rules of Court.**

In the matter of the Petition of the ATTORNEYS...I. L. Rep. 1 Mad. 24.

HIGHWAYS—Obstruction to.

See **Right to Sue. 1. 2. 3. 4. 5.**

SATHU *v.* IBRAHIM...I. L. Rep. 2 Bom. 457.

GEHANJI *v.* GANPATI...Ibid. 469.

KARIM BAKSH *v.* BADHA...I. L. Rep. 1 All. 249.

FAZAL HAQ *v.* MAHA CHAND... Ibid. 557.

RAJKOOMAR *v.* SAHEBZADA...I. L. Rep. 3 Cal. 20.

—— Power of Municipal Commissioner to close or divert.

See **Bengal Act III. of 1864.**

EMPRESS *v.* BROJONATH DEY...I. L. Rep. 2 Cal. 425.

See **Right to Sue. 4.**

FAZAL HAQ *v.* MAHA CHAND...I. L. Rep. 1 All. 557.

HINDU EXECUTOR—Position of—Void Bequest to Unascertained Class—Suit by Heir.

See **Limitation. 38.**

KHERODEMONEY *v.* DOORGAMONEY. I. L. Rep. 4 Cal. 455.

HINDU LAW—Application of—to Mahomedan Family adopting Hindu Customs.

See **Mahomedan Family adopting Hindu Customs.**

SUDDURTONNESSA *v.* MAJADA KHATOON...I. L. Rep. 3 Cal. 694.

HINDU LAW—ADOPTION.

—— Adopted Son, Agreement Defining and Restricting Rights of.

See **Hindu Law—Adoption. 15. 17.**

—— Adopted Son, Inheritance of, to Adoptive Mother.

See **Hindu Law — Inheritance—Adopted Son.**

SHAM KUAR *v.* GAZA DIN...I. L. Rep. 1 All. 255.

—— Adopted Son, Share of, on Partition.

See **Hindu Law—Partition. 11.**

RAGHUBANAND SADHU.....I. L. Rep. 4 Cal. 425.

—— Among Jains—Adoption of Daughter's Son by Widow without Permission of Husband valid.

See **Jain Law. 2.**

SHEO SINGH RAI *v.* MUSSAMUT DAKHO.....L. Rep. 5 I. A. 87; I. L. Rep. 1 All. 688.

—— Among Jains—Sister's Son.

See **Hindu Law—Adoption. 1.**

—— Cancellation or Renunciation of.

See **Hindu Law—Adoption. 18.**

—— Conditional.

See **Hindu Law—Adoption. 5. 17.**

—— of Daughter's Son.

See **Hindu Law—Adoption. 6. 7.**

See **Jain Law. 2.**

SHEO SING *v.* MUSST. DAKHO... L. R. 5 I. A. 87.

—— of Distant Kinsman.

See **Hindu Law—Adoption. 8.**

—— of Eldest Son.

See **Hindu Law—Adoption. 2.**

—— Gift and Acceptance.

See **Hindu Law—Adoption 15.**

Digitized by Google

HINDU LAW—ADOPTION—*contd.*

—— Limitation to Suit—to set aside.

See **Limitation. 66.**

RAJ BAHADOOR *v.* ACHUMBIT...**L. R. 6 I. A. 110.**

—— by Minor.

See **Hindu Law—Adoption. 10.**

—— of Mother's Sister's Son.

See **Hindu Law—Adoption. 4.**

—— of only Son.

See **Hindu Law — Adoption. 2. 3. 8. 9.**

—— of Sister's Son.

See **Hindu Law—Adoption. 18.**

—— Talabda Kolis.

See **Hindu Law—Adoption. 16.**

—— by Widow.

See **Hindu Law — Adoption. 2. 10. 11. 12. 13. 17.**

1. —— *Jains—Sister's Son.* — In questions arising between parties of the Jain sect, the custom of the sect should be inquired into and given effect to, although it may be at variance with Hindu law.

The adoption of a sister's son is valid under the Jain law. HASSAN ALI *v.* NAGA MAL. *Stuart*, C.J., and *Oldfield*, J...**I. L. Rep. 1 All. 289, 1876.**

[*Note.*—The objection to the validity of the adoption put forward in this case appears to have been two-fold, *viz.*, that the adopted son was the adopter's sister's son, and that he was such sister's *only* son. Whether this was so or not does not appear from the report.]

2. —— *Eldest Son—Only Son—Shebaitship—Succession of a Hindu Widow as Shebait—Special Custom.*] In a suit by a Hindu widow, as heir to her deceased husband, the last Shebait, to recover certain property dedicated to idols, it appeared that the plaintiff's husband was an adopted son of his predecessor in office, and that he was the eldest son of the first defendant, who was the nearest male cognate of the father. It was contended for the defendant, (1), that the adoption of an eldest son was invalid, and (2) that the plaintiff, being a female, was incompetent to perform the duties of a Shebait, and that the succession of a female to the Shebaitship was opposed to the custom of the family. The first defendant was in possession, under the terms of a compromise effected with him by the plaintiff's father and uncle on behalf of the plaintiff :—

Held that, according to the Dattaka Chandrika and Dattaka Mimansa, works of paramount authority on Hindu Law, though the gift and acceptance of an only son are strictly prohibited, there is no prohibition against the gift of an eldest son. The prohibition contained in paragraph 12 of Chapter I., § 11 of the Mitakshara, is only admonitory, and not mandatory. The adoption, therefore, of the plaintiff's husband was not invalid by reason of his having been the eldest son of his father.

Held also, that without saying that there was anything in the nature of the office which would prevent its being confined to the members of a particular family, or which would exclude females from inheriting, it lay on the plaintiff to establish clearly that she was entitled, as heiress of her husband, to succeed to the office and eject the defendent. The presumption in her favour from her husband having been in possession did not apply in this case with the same force as if the question were who was to succeed to his private estate. There, the ordinary rule of inheritance would prevail, unless displaced by some special rule. Here, the very question at issue was whether the rule of inheritance prevailed at all.

Held, on the evidence, that the succession to the office had not followed the ordinary rules of inheritance under the Hindu Law, and that the plaintiff's right to succeed as heir to her husband under the Hindu Law of inheritance was not established. JANOKEE DEBEA *v.* GOPAL ACHARJIA. *Markby* and *Mitter*, JJ...**I. L. Rep. 2 Cal. 365, 1877.**

S. C. under **Practice—Civil. 9.**

3. —— *Only Son—Sudras.*] The adoption of an only son is invalid according to the Bengal school of Hindu Law, and the prohibition applies to Sudras as well as to the higher castes. MANICK CHUNDER DUTT *v.* BHUGOBUTTY DOSSEE. *Garth*, C.J., and *Markby*, J...**I. L. Rep. 3 Cal. 443, 1878.**

4. —— *Among Sudras—Mother's Sister's Son.*] An adoption of the mother's sister's son is valid among Sudras. CHINNA NAGAYYA *v.* PEDDA NAGAYYA. *Morgan*, C.J., and *Kernan*, J.....**I. L. Rep. 1 Mad. 62, 1875.**

Digitized by Google

HINDU LAW—ADOPTION—*contd.*

5. —— *Conditional.*] "If the Assistant Judge had referred to the cases of *Vinayek Narayen Jog* v. *Govindrav Chintaman Jog* (6 Bom. H. C. Rep., A. C. J. 224) and *Chitko Raghunath* v. *Janaki* (11 Bom. H. C. Rep. 199), he would have seen that there is, at all events, authority for holding that the rights of a minor, given in adoption, may be defined and restricted by agreement between the natural and adoptive parents." *Per Westropp*, C.J., in RADHABAI *v.* GANESH TATYA GHOLAP...**I. L. Rep. 3 Bom. 7.**

See **12. 17,** *infra.*

6. —— *Daughter's Son—Sister's Son*—Factum valet, *Principal of—Lingayet.*] It is a general rule and a fundamental principle among Brahmans, Kshatryas and Vaishyas, that they are absolutely prohibited from, and incapable of, adopting a daughter's or sister's son, or son of any other woman whom they could not, by reason of propinquity, marry; and the burden of proving a special custom to the contrary amongst any members of these three regenerate classes, prevalent either in their caste or in a particular locality, lies upon him who avers the existence of that custom.

To such an adoption among Brahmans, Kshatryas and Vaishyas, it being invalid, inasmuch as those castes are positively interdicted from, and therefore incapable of, making such an adoption, the maxim *quod fieri non debuit, factum valet*, is quite inapplicable. The proper application of that rule must be limited to cases in which there is neither want of authority to give or accept, nor positive interdiction of adoption. In cases in which the Shastra is merely directory and not mandatory, or only indicates particular persons as more eligible for adoption than others, the maxim may be usefully and properly applied, if the moral precept or recommended preference be disregarded.

Lingayets are members of the Sudra, and not of the Vaishya caste. GOPAL NARHAR SAFRAY *v.* HANMANT GANESH SAFRAY. *Westropp*, C.J., and *Kemball*, J...**I. L. Rep. 3 Bom. 273, 1879.**

7. —— *Daughter's Son.*] Amongst Brahmans an adoption of a daughter's son is incestuous and invalid, and cannot be supported on the ground of *factum valet quod fieri non debuit.*

Gopal Narhar Safray v. Hanmant Ganesh Safray (I. L. Rep. 3 Bom. 273) followed. BHAGIRTHIBAI *v.* RADHABAI. *Westropp*, C.J., and *West*, J.....**I. L. Rep. 3 Bom. 298.**

HINDU LAW—ADOPTION—*contd.*

8. —— *Adoption of Distant Kinsman—* Dvyamushyana.] The adoption of a very distant relation, not included within the *sapindas* of the adoptive father, made in violation of the preferential right of the son of a brother of the whole blood, *held* to be valid. The texts which prescribe the preferential adoption of such son have not the force of law.

Quære—Whether the only son of a separated brother can be adopted as *dvyamushyana.* SRIMATI UMA DEYI *v.* GOKOOLANAND DAS MAHAPATRA...**L. Rep. 5 I. A. 40; I. L. Rep. 3 Cal. 587; 2 Cal. Rep. 51.**

S. C. under **Hindu Law — Inheritance—Daughter. 3.**

9. —— *Only Son.*] *Held* (*Turner*, J., dissenting), that the adoption of an only son cannot, according to Hindu law, be invalidated after it has once taken place. HANUMAN TIWARI *v.* CHIRAI...**I. L. Rep. 2 All. 164, 1879, F.B.**

10. —— *By Widow—Authority to adopt granted by a Minor — Reg. X. of* 1793, § 33.] Although the 33rd section of Bengal Reg. X. of 1793 prohibits a disqualified proprietor (*i. e.* the owner of an estate of which the Court of Wards has taken charge) from making or authorizing an adoption, except with the sanction of the Courts of Wards; yet the words of that section confine its operation to persons who are under the guardianship of the Court of Wards.

A valid authority to adopt can be granted by a Hindu minor who is not under the Court of Wards, and has attained to years of discretion according to the Hindu law. JAMOONA DASSYA CHOWDHRANI *v.* BAMASOONDERAI DASSYA CHOWDHRANI...**L. Rep. 3 I. A. 72, 1876; I. L. Rep. 1 Cal. 289; 25 W. R. 235.**

S. C. under **Right to Sue. 8.**

11. —— *By Widow—Succession to Impartible Zemindary for which no permanent Sunnud has been issued—Adoption—Consent of* Sapindas *in Undivided Family.*] The Hindu zemindar of Chinnakimidy, an hereditary impartible zemindary, died without legitimate issue, leaving a widow The appellant, his undivided half-brother, was placed in possession by the Collector as successor to the deceased; the Government claiming to nominate a successor in the case of zemindaries for which, though perma-

Digitized by Google

HINDU LAW—ADOPTION—*contd.*

nently settled, no permanent sunnud had been issued. Thereafter the widow adopted the respondent as a son to the deceased, in pursuance of his alleged written authority in that behalf, and with the consent of the natural father of the respondent, himself a *sapinda* of the deceased, though separate in estate from him.

In a suit brought by the respondent, by his adoptive mother and guardian, to recover the zemindary with mesne profits :—

Held, 1st, that there was no foundation for the claim of the Government to nominate a successor, and that it was settled law that the title to the zemindary is to be determined by the ordinary law of succession.

The *Marungapury Case* (L. Rep. 1 I. A. 282) approved.

Held, also, that the authority to adopt was a genuine document, and sufficient to validate the adoption.

Otherwise, the assent given by one separated and distant *sapinda* (himself the father of the child taken in adoption) did not in fact purport, and was not in law sufficient, to authorize the adoption.

Although, according to the law of Madras, a widow not having her husband's permission may adopt a son to him, if duly authorized by his kindred; yet the requisite authority is in the case of an undivided family to be sought within the family, even though the particular property devolving on the adopted son is to be held in severalty, and not in coparcenery. The *Ramnad Case* (12 Moo. I. A. 269) approved. SRI RAGHUNADHA *v.* SRI BROJO KISHORO... **L. Rep. 3 I. A. 154, 1875; I. L. Rep. 1 Mad. 69.**

S. C. under **Judgment.**

12. —— *Adoption by Widow after succeeding as Heiress to her Son—Dravada District—Motives of Widow in making Adoption without Written Assent of Husband—Assent of* Sapindas.] In a suit by an adopted son to recover a zemindari (in the *Dravada* district) from the daughters of the late zemindar, who had been put into possession by the Collector on the death of the widow of the late zemindar, it appeared that the latter had died leaving a son, in whom the zemindari had vested as heir; that the son died a minor and without issue; that on his death his mother was his heiress, and was admitted as such and took possession of the zemindari, and, some years after the death of her son, adopted the appellant, without any written authority from her husband, but with the assent of all the surviving *sapindas* of the family of the original zemindar, and that all the ceremonies requisite for an adoption were performed :—

Held, that if there had been a written authority to the mother from her deceased husband to adopt a son in the event of his natural son dying under age and unmarried, the fact of the descent being cast would have made no difference, the adoption being made in derogation of the adoptive mother's estate; and that there was no reason why the general proposition established by the *Ramnad Case* (*Collector of Madura v. Muttoo Ramalinga Sethapathy*, 12 Moo. I. A. 397)—that, according to the law prevalent in the *Dravada* country, a Hindu woman, not having her husband's permission, may, if duly authorized by his kindred, adopt a son to him—should not apply in every case in which a widow might make an adoption under her husband's written authority. There was, therefore, no ground for saying that because the estate descended to the son, natural born of the original zemindar, and the widow of the latter took it as heiress of her son, and not immediately from her husband, the adoption made by her, if otherwise valid, therefore became invalid.

Held also, that the High Court was wrong, upon the evidence, in deciding that there had not been made out such an assent on the part of the kinsmen as to show that the adoption was done by the widow in the proper and *bonâ fide* performance of a religious duty.

It would very dangerous to introduce into adoption cases nice questions as to the particular motives operating on the mind of the widow; and all that their Lordships intended to lay down in the *Ramnad Case* (*ubi supra*) was, that there should be such proof of assent on the part of the *sapindas* as would suffice to support the inference that the adoption was made by the widow, not from corrupt or malicious motives, or in order to defeat this or that *sapinda*, but upon a fair consideration, by what may be called a family council, of the expediency of substituting an heir by adoption to the deceased husband. RAJAH VELLANKI VENKATA KRISHNA ROW *v.* VENKATA RAMA LAKSHMI NARSAYYA... **L. Rep. 4 I. A. 1, 1876; I. L. Rep. 1 Mad. 174.**

See **17**, *infra*.

Digitized by Google

HINDU LAW—ADOPTION—*contd.*

13. —— *By Widow—Divesting of Property.*] A Hindu testator died, leaving two sons, *P.* and *B.*, to whom he gave all his property absolutely. In 1845 *B.* died, leaving a widow and a son *K. M.*, and a will by which he gave all his property absolutely to *K. M.* In 1851 *P.* died without male issue, leaving a widow *B. D.* and a daughter who died childless and intestate in *B. D.*'s lifetime. *P.* had made a will by which he bequeathed all his property to his widow *B. D.* for life, and on her death to his daughter's sons, if any. *B. D.* died in October 1864, leaving a will, of which she appointed her brother *G.* executor; and *G.*, in accordance with the directions in her will, took possession of the property which *B. D.* took as widow and under the will of *P. K. M.* died in 1855, a minor, leaving a will by which he authorized his widow, then a minor, to adopt a son on her attaining majority. In August 1876 the widow adopted the plaintiff, in pursuance of the authority given in her husband's will. In a suit brought by the plaintiff, as adopted son of *K. M.* and heir of *P.*, to recover the property left by *P.*, the issue raised was:—Assuming that the plaintiff was the lawfully adopted son of *K. M.*, was he the legal heir of *P.*?

Held, that, as the plaintiff had not been adopted when the succession opened out on the death of *B. D.* he was not entitled to the property as the heir of *P.* On *B. D.*'s death the property must have vested in some person who was by Hindu Law the reversionary heir to *P.*, or in the Government if no such person existed. The plaintiff's adoptive mother could not claim to hold possession of the property from the death of *B. D.* in trust for a future adopted son; and as property once vested by inheritance cannot be defeated by a subsequent adoption by the widow, unless such adoption is effected by the direct agency or with the express consent of the heir, the plaintiff was not entitled to succeed. KALLY PROSONNO GHOSE *v.* GOCOOL CHUNDER MITTER. *Pontifex* and *Mitter*, JJ...**I. L. Rep. 2 Cal. 295, 1877.**

14.——*Kulkarni Vatan—Sanction of Government.*] The sanction of Government to an adoption by a Kulkarni, or his widow, or by a coparcener in the kulkarniship, is not necessary to give it validity, nor has the Government any right to prohibit, or otherwise intervene in, such an adoption. NARHAR GOVIND KULKARNI *v.* NARRAYAN VITTAL. *Westropp*, C. J., and *N. Harridas*, J... **I. L. Rep. 1 Bom. 607, 1877.**

HINDU LAW—ADOPTION—*contd.*

15.——*Competency of Wife to give in Adoption—Conditional Consent of Father to Gift of Son—Non-Fulfilment of Condition—Mistake of Fact.*] It is not competent to a wife, according to the Hindu law prevailing in the Bombay Presidency, to give a son in adoption against the will, express or implied, of her husband, the father of that son.

Where the natural father of the son given in adoption wrote to the adoptive mother, a widow, giving his consent to the adoption on certain conditions, one of which was that the assent of the Government to the adoption should be obtained previously to the adoption, and this condition was not fulfilled, though the other conditions were substantially complied with:—

Held, that the father of the boy having made the prior assent of Government an essential condition of his own assent, it could not be dispensed with, or relieved against, though the condition was unnecessary, and was imposed under a mistaken belief that the assent of Government was necessary to the adoption, and that the adoption made in disregard of it was no adoption at all. RANGABAI *v.* BHAGIRTHIBAI. *West* and *Pinhey*, JJ.....**I. L. Rep. 2 Bom. 377, 1877.**

16.——*Among the Talabda Koli Caste—Contract to settle—Specific Performance.*] It is not a necessary consequence of the circumstance that the spiritual motive for adoption, which exists among Hindus of castes higher, or other, than the Talabda Koli caste, has no influence upon it, that its members may not lawfully adopt.

Where a member of the Talabda Koli caste, by an express promise to settle his property upon the defendant, induced the parents of the defendant to give him their son in adoption, but died without having executed the settlement:—

Held, that the equity to compel his heir and legal personal representative specifically to perform the contract survived him, and that the property when it came into his widow's hands was bound by the contract; and therefore, when the widow of the adoptive father, nearly thirty years after his death, did, by a deed of settlement, carry her husband's contract into complete execution:—

Held, that, strictly speaking, the property of the deceased on his death vested in interest in the adopted son, the defendant, as his heir, who was then entitled to immediate possession, and the acts of the widow were merely for the

Digitized by Google

purpose of, and had the effect of, vesting that property in him in possession. But that even if the adopted son, the defendant, were not himself regarded as the heir of his adoptive father, but merely as a person on whom the latter had contracted to settle his property, then his adoptive father having died childless, divided from his kinsmen, and not having performed his contract, his moveable and immoveable estate vested completely in the widow by way of inheritance, who had full power to perform the contract of her husband, and was not bound to avail herself of the plea of limitation if such a plea were open to her, and that it was not competent for the person who, if her husband had not adopted the defendant, on the death of the widow, would have been her husband's heir, to set up such a plea, which had been waived by the widow. BHALA NAHANA *v.* PARBHU HARI. *Westropp*, C.J., and *West*, J.....**I. L. Rep. 2 Bom. 67, 1877.**

17. —— *Conditional Adoption—Agreement by Adoptive Mother with Natural Father in Derogation of the Infant—Adopted Son's Rights—Ratification.*] A Hindu widow, during the lifetime of her husband's minor adopted son, alienated two-thirds of her husband's estate. On the son's death, she being heiress to the son, but under authority from her husband, adopted the plaintiff, while an infant, entering into an agreement with his natural father which recited the alienations made by her, and proceeded as follows:—"Agreeing, therefore, to my begotten son, who is the minor adopted son above mentioned, being put in possession of the said property which now remains, after he has attained his majority, I have, with my full consent given my said son in adoption; whether or not there is more property, neither I nor my son, who is the adopted son above mentioned, have any sort of claim or title to the same or to their enjoyment." No fraud was practised upon the father, and the conclusion that their Lordships drew from the evidence was, that he had consented to give his son in adoption on the understanding, that he would only inherit about one-third of the property of his late adoptive father's estate, being aware, or not caring to inquire, how the remaining two-thirds had been disposed of. The plaintiff, two years after he came of age, and his adoptive mother, executed an agreement, dated the 19th August 1871, reciting the said alienations whereby the mother and son entered into a family arrangement with respect to the residue. This agreement was voluntarily executed by the plaintiff when he was aware of his rights, and under the advice of third parties, strangers to his adoptive mother. In a suit by the plaintiff against his adoptive mother and the alienees of the two-thirds of the estate, to set aside the alienations, and recover all the estate which was of the adoptive father, alleging himself to have been ousted from the whole thereof, their Lordships of the Privy Council said:—"Some of the circumstances of this case are peculiar. The first adopted son became his father's heir; on the death of that son after that of his father, the widow became the heir, not of her late husband, but of the adopted son. Whether by the act of adopting another son she in point of law divested herself of that estate in favour of the second son may be a question of some nicety, on which their Lordships give no opinion. How far the natural father can by agreement before the adoption renounce all or part of his son's rights so as to bind that son when he comes of age is also a question not altogether unattended with difficulty; although the case of *Chitko* v. *Janaki* (11 Bom. H. C. Rep. 199) certainly decides that an agreement on the part of the father that his son's interest shall be postponed to the life interest of the widow is valid and binding. In this case their Lordships think it enough to decide that the agreement of the natural father was not void, but was, at least, capable of ratification when his son came of age"; and held that the same was validly ratified by the agreement of the 19th of August 1871. RAMASAWMI AIYAN *v.* VENCATARAMAIYAN.....**L. Rep. 6 I. A. 196, 1879; I. L. Rep. 2 Mad. 91; 5 Cal. Rep. 346.**

See **5. 12**, *supra.*

18. —— *Cancellation of — by Adoptive Father.*] When an adoption has once been absolutely made and acted on, it cannot be cancelled or renounced by the adoptive father, and it cannot be declared invalid or set aside at the suit of the adoptive father. SUKHBASI LAL *v.* GUMAN SINGH. *Stuart*, C.J., and *Spankie*, J.....**I. L. Rep. 2 All. 366, 1879.**

HINDU LAW—ALIENATION OF ANCESTRAL PROPERTY.

See Index heading **Alienation of Ancestral Property.**

Digitized by Google

HINDU LAW—ALIENATION OF ANCESTRAL PROPERTY—*contd.*

—— Gift of Undivided Share by Member of Undivided Family.

See **Hindu Law—Gift. 2.**

BALLABH DAS *v.* SUNDER DAS... **I. L. Rep. 1 All. 429.**

—— For Maintenance of Illegimate Son.

See **Hindu Law — Maintenance of Illegitimate Son. 3.**

RAJAH PARICHAT *v.* ZALIM SINGH. **L. Rep. 4 I. A. 159; I. L. Rep. 3 Cal. 214.**

—— Mortgage by Father during's Son's Minority—Suit to enforce Mortgage — *Onus probandi.*

See **Onus Probandi. 7.**

BHEEKNARAIN SINGH *v.* JANIK SINGH.....**I. L. Rep. 2 Cal. 438.**

—— By Sale in Execution of Decree against Member of Undivided Famiiy.

See **Bombay Act V. of 1862.**

ARDEŞIR *v.* MUSE...**I. L. Rep. 1 Bom. 601.**

See **Civil Procedure Code, Act VIII. of 1859, § 269.**

KALAPA *v.* VENKATESH.....**I. L. Rep. 2 Bom. 676.**

See **Hindu Law—Alienation of Ancestral Property. 1. 2. 3. 4. 5.**

See **Hindu Law — Liability of Ancestral Estate in the hands of the Heirs for the Debts of the Ancestors.**

NARRAYAN *v.* NARSO...**I. L. Rep. 1 Bom. 262.**

And *See* **Hindu Law—Undivided Family. 3. 4. 7. 8.**

DEENDAYAL LALL *v.* JUGDEEP NARAIN SINGH...**L. Rep. 4 I. A. 247; I. L. Rep. 3 Cal. 198.**

RAI NARAIN DAS *v.* NOWNIT LAL. **I. L. Rep. 4 Cal. 809.**

LACHMI DAI KOARI *v.* ASMAN SINGH.....**I. L. Rep. 2 Cal. 213.**

BABAJI *v.* VASADEV...**I. L. Rep. 1. Bom. 95.**

HINDU LAW—ALIENATION OF ANCESTRAL PROPERTY—*contd.*

See **Sale in Execution of Decree. 10. 15.**

VENKATRAMAYYAN *v.* VENKATARUBBRAMANIA...**I. L. Rep. 1 Mad. 358.**

VENKATASAMI *v.* KUPPAIAN... **Ibid. 354.**

—— Sale by Father during Son's Minority—Suit to set aside Sale.

See **Onus Probandi. 8.**

ADURMONI DEYI *v.* CHOWDHRY SIB NARAIN KUR...**I. L. Rep. 3 Cal. 1.**

—— By Will in favour of one Son.

See **Hindu Law—Will. 11.**

LAKSHMAN *v.* RAMCHANDRA...**I. L. Rep. 1 Bom. 561.**

1. —— *Mortgage of Family House—Sale in Execution of Decree.*] *L.*, a Hindu, mortgaged the dwelling-house of his family, such dwelling-house being ancestral property. In a suit brought by the mortgagee against the widow and mother of *L.* to enforce the mortgage:—*Held*, that the mortgage could be enforced by a decree for sale of the house, though the defendants were residing in it. BHIKHAM DAS *v.* PURA. *Pearson* and *Spankie*, JJ...**I. L. Rep. 2 All. 141, 1879.**

2. —— *Liability of Ancestral Property in hands of Heir for Debts of Ancestor—Sale by Ancestor—Suit to set aside Sale.*] Ancestral property which descends to a father under the Mitakshara law is not exempted from liability to pay his debts because a son is born to him. It would be a pious duty on the part of the son to pay his father's debts, and the ancestral property, in which the son, as the son of his father, acquires an interest by birth, is liable to the father's debts. The freedom of the son from the obligation to discharge the father's debts has respect to the nature of the debt, and not to the nature of the estate, whether ancestral or acquired by the creator of the debt. The Mithila law is the same. Where a father sold ancestral property in order to satisfy a decree that had been obtained against him, and the bulk of the purchase money was applied in the discharge of the judgement debt, but the application of a small portion was not accounted for:—*Held*, that his son could not,

Digitized by Google

HINDU LAW—ALIENATION OF ANCESTRAL PROPERTY—*contd.*

therefore, under the Mithila law, set aside the sale, and turn out the *bonâ fide* purchaser.

The *onus* of showing that the debt contracted by the father was illegal or contracted for immoral purposes, or that the bond or the decree on it was obtained *benamee* for the benefit of the father, or merely to enable the father to sell the family property and raise money for his own purposes, lay on the plaintiff.

Quære—Whether a son can, under the Mitakshara law, recover an undivided share of ancestral property sold by his father. A son is not entitled under the Mithila law to any interest in ancestral property sold by the father before his birth.

Where ancestral property has been sold in execution of a decree obtained against a father under an order of the Court directing the particular property to be sold, the purchaser is not bound to go back beyond the decree to ascertain whether the Court was right in giving the decree, or having given it, in putting up the property for sale in execution upon it. The purchaser is not bound to go further back than to see that there was a decree against the father; that the property was property liable to satisfy the decree if the decree had been properly given against him; and having inquired into that, and *bonâ fide* purchased the property under execution, and *bonâ fide* paid valuable consideration for it, he cannot be ousted by a son of the judgment-debtor. GIRDHAREE LALL *v.* KANTOO LALL; MUDDUN THAKOOR *v.* KANTOO LALL...**L. Rep. 1 I. A. 321, 1874; 14 Beng. L. Rep. 187; 25 W. R. 57.**

3. —— *Mitakshara Law—Alienation by a Co-Sharer of Undivided Share—Separate Suit by Co-Sharer—Minority—Act VIII. of* 1859, § 246—*Act XIV. of* 1859, §§ 11, 12.] *B.*, a Hindu governed by the Mitakshara law, died, leaving no male issue, but only two widows, and two nephews, *S.* and the appellant, the only remaining male members of an undivided family. *S.* sued for, and obtained possession of, from the widows of *B.*, a moiety of the property left by *B.* The other moiety of the property was sold in execution of various decrees obtained against the widows by creditors of the deceased *B.* In regard to three of the execution sales, the appellant, by his mother and guardian, more than a year before suit, unsuccessfully applied, under § 246 of Act VIII. of 1859, for a release of the property attached; in regard to another sale, it was made of property subject to a *zurpeshgee* lease created by the deceased.

The appellant (by his mother and guardian) sued the widows, the auction purchasers, the zurpeshgeedars, and *S.*, in order to set aside those sales and recover possession of his moiety; but with regard to the zurpeshgeedar defendants no special ground for setting aside the leases was alleged in the plaint, nor were any issues specially pointed to the validity thereof. *S.* disclaimed all title to such moiety.

A Full Bench of the High Court, in answer to questions referred to it by the Division Bench in this suit, ruled—*1st*, that the appellant had a right to sue the purchasers under the decree to recover back the estate, inasmuch as the property belonged to him, and the title under the decree against the widows was an invalid title; and, *2ndly*, that the deceased had no authority to mortgage his undivided share in the joint family property if it should appear that he did so without the consent of his co-sharers, and in order to raise money on his own account, and not for the benefit of the family. No appeal was preferred against these rulings, and the Division Bench held, in alleged conformity thereto, that the title of the defendants, including the zurpeshgeedars, who were not entitled to have their mortgage redeemed, failed, that in regard to their sales the appellant's claim was barred by § 246 of Act VIII. of 1859, inasmuch as he had sued whilst under disability, and after a year had elapsed from the rejection of his claim; but that, notwithstanding the first answer of the Full Bench, the whole suit must be dismissed, on the ground that it was wrongly framed, inasmuch as the appellant could not, consistently with the second answer, sue for his separate share :—

Held by their Lordships, *1st*, that §§ 11 and 12 of Act XIV. of 1859 do apply to § 246 of Act VIII. of 1859, and in the case of a minor modify the period of limitation resulting from that section, and that the appellant was under disability within the meaning of those sections, and that the suit having been brought after the expiration of one year, but during disability, was in time.

2ndly, that, inasmuch as *S.*, the only other member of the joint family, had disclaimed all

Digitized by Google

HINDU LAW—ALIENATION OF ANCESTRAL PROPERTY—*contd.*

interest in the appellant's share, and had been made a party defendant; and inasmuch as the title of the purchasers was founded on execution sales confined to that moiety which on partition would fall to the appellant; and inasmuch as the objection to the frame of the suit which was purely technical and not substantial, had not been taken by the defendants, but originated with the Division Bench; such objection could not be allowed to prevail against the substantial justice of the case.

Held also, that the appellant could not recover against the zurpeshgeedars, no proper issue with reference to their title to be redeemed having been framed and determined.

On the death without issue of a member of a joint Hindu family subject to the Mitakshara law, his undivided share in the joint family estate passes to the surviving members of the joint family, and not to his widows, and cannot be made liable for debts incurred by him on his own account under decrees obtained against his widows as his representatives. If it can be made available at all for such debts, it must be in a suit against the survivors to charge the share of the deceased in the joint estate with the payment of the decree, by suing the survivors for the debt, and asking to have the deceased's share of the estate made available in the hands of the survivors to the same extent as that to which it would have been made available if the deceased had left a son, and the estate had gone to him by inheritance, instead of to the survivors by survivorship.

Quære, where a member of a joint Hindu family governed by the Mitakshara law, without the consent of his co-sharers, and in order to raise money on his own account, and not for the benefit of the joint family, mortgages his undivided share in a portion of the joint family property, can the other members of the joint family, on his death, recover from the mortgagee the mortgaged share, or any part of it, without redeeming?

Semble, that the respondents, if they had appeared, might, without a cross-appeal, have contested the correctness of the answers given by the Full Bench to the questions referred to them, which were not in the form of a decree, or even of an interlocutory order. MUSSUMAT PHOOLBAS KOONWAR *v.* LALLA JOGESHUR SA-

HINDU LAW—ALIENATION OF ANCESTRAL PROPERTY—*contd.*

HOY...L. Rep. 3 I. A. 7, 1875; I. L. Rep. 1 Cal. 226.

S. C. under **Practice—Privy Council. 3.**

4.—— *Mitakshara Law—Mortgage of Ancestral Estate by the Father—Purchasers at Execution Sale, with Notice of the Co-Sharers' Claims—Effect of Execution Sale on the Share of Deceased Judgment-Debtor.*] *A. S.*, a Hindu governed by the Mitaksara, became in 1862 the sole owner of certain ancestral immoveable property. In 1862 and 1869 respectively he had born to him two sons (the appellants). In 1870 *A. S.* mortgaged the whole of the immoveable property to one *B.*, to secure a debt which, it was found by the Courts in India, had been incurred by him without justifying necessity.

B., suing on the mortgage bond, obtained in 1872 an *ex-parte* decree against *A. S.* alone for the amount due for principal, interest, and costs. During the lifetime of *A. S.* execution was issued against the mortgaged property, which was ordered to be put up for sale, but the sale in execution did not take place till after the death of *A. S.* when it was purchased by the respondents. Prior to such sale the appellants had filed a petition objecting to the sale, and were referred to a civil suit.

In a suit after the sale by the appellants against the execution creditor and the purchasers (the respondents) for the adjudication of their right to, and confirmation of possession of the property sold, and to have the mortgage bond, the *ex-parte* decree, and the execution sale set aside:—

Held, that the finding that the appellants had, as between them and *B.*, the execution creditor, established that neither they nor their interest in the ancestral immoveable estate in their hands, were liable for the debt to *B.*, which had been contracted by their father, was equally binding as against the purchasers (the respondents), who were parties to the suit, and had gone to trial upon the issues on which that finding had been arrived at, and had equally with *B.*, the execution creditor, the means of cross-examining the plaintiffs' (appellants) witnesses, and of adducing counter-evidence, and who having purchased after objections filed by the appellants must be taken to have had notice, actual or constructive, thereof, and of the order,

Digitized by Google

HINDU LAW—ALIENATION OF ANCESTRAL PROPERTY—*contd.*

made upon them, and therefore to have purchased with knowledge of the appellants' claim, and subject to the result of this suit to which they had been referred. *Held*, also, that whether or not, according to the law in the Bengal Presidency, one coparcener has authority without the consent of his co-sharers to mortgage his undivided share in the joint family estate, in order to raise money on his own account, and not for the benefit of the family, such share may be seized and sold in execution, and the purchaser at an execution sale during the lifetime of the debtor for his separate debt acquires his share in such property with the power of ascertaining and realizing it by partition,—and that at the time of the death of *A. S.* the execution proceedings, under which the property mortgaged had been attached and ordered to be sold, had gone so far as to constitute, in favour of the judgment creditors (the respondents) a valid charge upon the land to the extent of the undivided share and interest of *A. S.*, which could not be defeated by his death before the actual sale, which sale transferred to the respondents the undivided share which formerly belonged to *H. S.*; and that, notwithstanding his death, the respondents were entitled to work out the rights which they had thus acquired by means of a partition. SURAJ BANSI KOER *v.* SHEO PRASAD SINGH... **L. Rep. 6 I. A. 88 ; 5 Cal. Rep. 226, 1878.**

5. —— *Mitakshara Law—Undivided Property belonging to Father and Son—Decree against Son—Purchase of Son's Interest—Sale by Father—Suit for Possession by Purchaser from Father.*] Where property belongs to a father and son governed by the Mitakshara law, the son's interest vests at birth, and is saleable. The son may obtain a partition and separate possession of his share of ancestral property, and his share once partitioned will be liable to sale. There is, therefore, no reason why the interest of the son in the property while undivided should not be sold in satisfaction of his debts, and why the purchaser should not be entitled to obtain partition and possession. Where such a purchaser had obtained possession of the whole property ;—*Held* in a suit by a purchaser from the father, that, to avoid multiplicity of suits, the simpler course would be to decree joint possession of the whole premises to the two purchasers until they should mutually make some other arrangement. JALLIDAR

HINDU LAW—ALIENATION OF ANCESTRAL PROPERTY—*contd.*

SINGH *v.* RAM LALL. *Jackson*, C.J. (Offg.), and *Tottenham*, J.....**I. L. Rep. 4 Cal. 723, 1878.**

6. —— *Family Necessity—Manager's Discretion—Sale.*] "Family necessity" is an expression that must receive a reasonable construction ; and the head of the family, and those dealing with him, must, in the interest of the family itself, be supported in transactions which though in themselves diminishing the estate, yet prevent, or tend to prevent, still greater losses. A reasonable latitude, too, must be allowed for the exercise of the manager's judgment, especially in the case of a father, though this must not be extended so as to free the person dealing with him from the need of all precautions where a minor son has an interest in the property.

The fact that a mortgage, or a bond, to pay off which ancestral family property is sold, had some time to run, is not a sufficient reason to disprove an otherwise apparent family necessity.

A debt contracted by the father of the family in order to enable him to earn a maintenance for the family, is one contracted under the pressure of a family necessity, which the Hindu law fully recognizes. BABAJI MAHADAJI *v.* KRISHNAJI DEVJI. *West* and *Pinhey*, J.J...**I. L. Rep. 2 Bom. 666, 1878.**

7. —— *Sale by Father during Minority of Son—Suit to set aside Sale—Power of Member of Undivided Family to alienate his share.*] *F.*, during the minority of his son, the present plaintiff, sold ancestral immoveable property to provide means for immoral purposes, and not under any necessity recognized by Hindu law. In a suit brought by the plaintiff in his father's lifetime to obtain possession of the property alienated, and to cancel the deed of sale, the order of reference to the Full Bench declared that there was no reason to believe that the purchaser acted otherwise than *bonâ fide*, and referred the question whether the plaintiff could obtain possession of the property alienated, and whether the purchaser had by his purchase acquired the share of *F.*, and might have that share ascertained by partition.

Held by *Pearson*, J., that the first question must be answered in the negative, and that on the supposition that the purchaser acted in good

Digitized by Google

HINDU LAW—ALIENATION OF ANCESTRAL PROPERTY—*contd.*

faith, his Lordship would be inclined to answer the second question in the affirmative.

Held by *Oldfield* and *Spankie*, JJ., that the sale not having been made for the purpose of satisfying any debts due, nor for the use of the family, nor from proper necessity but entirely to provide money for the indulgence by *F.*, of immoral and vicious pleasures, was liable to be set aside at the instance of the plaintiff. Nor could it be said that this was a case in which the purchaser, as dealing with the guardian of a minor, or the manager of joint ancestral estate, could claim partition: for though the transaction was so far *bonâ fide* on his part that he paid the value for the property, it was clear that, if he had made reasonable inquiry, he could have learnt the circumstances under which the sale was being made, and been placed on his guard.

Held also, that according to the Hindu law prevailing in the North-West Provinces, the sale was invalid even to the extent of the share of *F.*, inasmuch as one coparcener cannot, according to that law, without the consent, express or implied, of his coparceners, alienate his own share by voluntary alienation. CHAMAILI KUAR *v.* RAM PRASAD...**I. L. Rep. 2 All. 267, 1879, F. B.**

HINDU LAW — ALIENATION OF SELF-ACQUIRED PROPERTY—

By Gift—Gift in favour of one Son to exclusion of others,

See **Hindu Law—Gift. 1.**

SITAL *v.* MADHO...**I. L. Rep. 1 All. 394.**

HINDU LAW — ALIENATION BY WIDOW.

—— Accumulation.

Sea **Hindu Law—Alienation by Widow. 1.**

—— By Gift.

See **Hindu Law—Alienation by Widow. 2.**

See **Hindu Law—Gift. 2.**

RUDR NÁRAIN *v.* RUP KUAR...**I. L. Rep. 1 All. 734.**

—— of Immoveable Property to Pay Time-barred Debt.

See **Hindu Law—Alienation by Widow. 5.**

HINDU LAW — ALIENATION BY WIDOW—*contd.*

—— of Lands Purchased with money granted in lieu of Maintenance.

See **Hindu Law—Alienation by Widow. 4.**

—— of Lands Purchased with *Stridhan.*

See **Hindu Law—Alienation by Widow. 3.**

—— by Will.

See **Hindu Law—Will. 5.**

MAHOMED SHAMSOOL *v.* SHEWUKRAM.....**L. R. 2 I. A. 7.**

—— *Adoption—Family Arrangement—Construction of Deed—Accumulations.*] One *O. T.*, a Hindu, adopted a son *G.*, and, after the adoption, executed a deed of gift, by which, after making provision for his daughter, he declared "that the remaining *milkiut* and *minhai* estate, together with the amount of the ready money, articles, slaves, and all household furniture, I have placed in possession of *C. T.*, my wife, to be enjoyed during her lifetime, in order that she may hold possession of all the properties and *milkiut* possessed by me, the declarant, during her lifetime, and by the payment of the Government revenue appropriate the profits derived therefrom, but that she should not by any means transfer the *milkiut* estates and the slaves; and that after the death of my aforesaid wife the *milkiut* estates and the household furniture shall devolve on *G. T.*, my adopted son." On the same day *G. T.* executed a similar document. *Held*, that considering the document executed by *O. T.*, together with the surrounding circumstances, which were proper to be considered, there was no reason for departing from what appeared to be the plain and obvious construction of its language, *viz.*, that it was in the nature of a family settlement, giving to *C. T.* an estate for life, with power to appropriate the profits, and to *G. T.*, in the phraseology of English law, a vested remainder after her death.

There being no evidence extraneous to the document, or expressed in it, or to be inferred by necessary or even reasonable implication from the language of it, of any such understanding as that supposed by the High Court to have been come to by *O. T.* and his adopted son *G. T.*, *viz.*, that, notwithstanding the adoption, *C. T.* should take and enjoy the estate of her husband, in the same manner as she would have

Digitized by Google

HINDU LAW — ALIENATION BY WIDOW—*contd.*

taken and enjoyed it if no adoption had taken place,—*i.e.* in her character as Hindu widow,—the document was not, upon mere conjecture of what might probably have been intended, to be so interpreted as to materially change the nature of the estate taken by *C. T.*

For, if she took the estate only of a Hindu widow, she would be unable to alienate the profits, or, at all events, whatever she purchased out of them would be an increment to her husband's estate: while, on the other hand, she would, as a Hindu widow, have the right, under certain circumstances, if the estate were insufficient to defray the funeral expenses or her maintenance, to alienate it altogether. She would have the power to sell her own estate; and *G. T.*, would not be possessed in any sense of a vested remainder, but only of a contingent one. She would also completely represent the estate, and under certain circumstances the Statute of Limitations might run against the heirs to the estate, whoever they might be.

There being no reason for importing into the document words which would carry with them all these consequences, it must be construed according to its plain meaning, and whatever property, real or personal, was bought by *C. T.* out of the proceeds of her husband's estate, belonged to her. *Sreemutty Rabutty Dossee* v. *Sibchunder Mullick* (6 Moo. I. A. 1) explained. MUSSUMAT BHAGBUTTI DABE *v.* CHOWDHRY BHOLANATH THAKOOR... **L. Rep. 2 I. A. 256; 24, W. R. 168, 1875.**

S. C. **I. L. Rep. 1 Cal. 104**, where, however, no detailed report is given.

2. —— Stridhan — Soudayakam — *Gift.*] Where a Hindu wife had a joint interest with her husband in certain landed properties, partly by purchase jointly with her husband, and partly by gift from her father:—

Held, that the interest she possessed was, so far as it went, an absolute and independent interest, the one by purchase and the other by the gift (so far as it embraced her interest) being in the nature of *Soudayakam*, and that she was entitled on the death of her husband to alienate her interest by gift... MADHAVARAYYA *v.* TIRTA SAMMI. *Morgan*, C.J., and *Innes*, J...**I. L. Rep. 1 Mad. 307, 1877.**

HINDU LAW — ALIENATION BY WIDOW—*contd.*

3. —— *Land purchased with* Stridhan—*Alienation of—by Will.*] A Hindu lady, who had during marriage received various presents of moveable property from her husband after his death, purchased certain immoveable property, partly with the amount of such presents, partly with money obtained by pledging her own jewels admitted to be her *stridhan*, partly by using her own credit and ability, and partly by creating a charge on the property purchased:—

Held, that the property so purchased by the widow became her property as absolutely as that which enabled her to acquire it, and that she could dispose of it by will.

Per Kindersley, J.—It might be that if she had acquired the property before her husband's death, she would not have had an uncontrolled power of alienation so long as he lived. VENKATARAMA RAU *v.* VENKATA SURIYA RAU. *Morgan*, C.J., and *Kindersley*, J...**I. L. Rep. 1 Mad. 281, 1877.**

4. —— *Grant of Money in lieu of Maintenance—Lands purchased with.*] Where a sum of money was given to a Hindu widow, by her husband's family, without restriction, in lieu of maintenance;—

Held, that it became absolutely her property, and that she could dispose by will of lands purchased by her with such money. NELLAIKUMARU CHETTY *v.* MARAKATHAMMAL. *Innes* and *Kindersley*, JJ...**I. L. Rep. 1 Mad. 166, 1876.**

S. C. under **Hindu Law—Will. 8.**

5. —— *Payment of Time-barred Debt.*] The *dictum* in *Melgiriappa* v. *Shivappa* (6 Bom. H. C. Rep., A. C. J. 270), that payment of a time-barred debt of a deceased husband was not a sufficient purpose to support an alienation by his widow against his male heir, was not indispensable to the decision.

An English executor may pay a time-barred debt of his testator. The religious law of the Hindu widow, which is even more urgent than the moral obligation of the English executor, enjoins on her the duty of paying the debts of her husband if he be not a member of an undivided family. She completely represents the inheritance, and is not bound to take advantage of a plea of limitation, if such plea be open to her. BAHANA NAHANA *v.* PARBHU HARI...**I. L. Rep. 2 Bom. 67, p. 71** *seq.*

Digitized by Google

HINDU LAW — ANCESTRAL PROPERTY—Alienation of.

See **Hindu Law — Alienation of Ancestral Property.**

—Alienation of—for Maintenance of Illegitimate Son.

See **Hindu Law—Maintenance of Illegitimate Son. 3.**

RAJAH PARICHAT *v.* ZALIM SINGH. **L. Rep. 4 I. A. 159; I. L. Rep. 3 Cal. 214.**

—— Mortgage of — by Father during Son's Minority—Suit to enforce Mortgage—*Onus Probandi.*

See **Onus Probandi. 7.**

BHEEKNARAIN SINGH *v.* JANUK SINGH...**I. L. Rep. 2 Cal. 438.**

—— Nature of Son's Interest in Immoveable.

See **Hindu Law — Undivided Family. 5.**

BALDEO DAS *v.* SHAM LAL...**I. L. Rep. 1 All. 77.**

—— Partition does not alter its Ancestral Character.

See **Onus Probandi. 8.**

ADURMONI *v.* CHOWDHRY SIB NARAIN ... **I. L. Rep. 3 Cal. 1.**

—— Partition of Immoveable—Right of Sons to compel.

See **Hindu Law—Partition. 2.**

SURAJ BUNSI KOER *v.* SHEO PERSHAD SINGH...**L. Rep. 6 I. A. 88, 100.**

—— Sale of in Execution of Decree against Member of Undivided Family.

See the Index heading **Alienation of Ancestral Property.**

—— Sale by father during Son's Minority—Suit to set aside Sale.

See **Onus Probandi. 8.**

ADURMONI *v.* CHOWDHRY SIB NARAIN...**I. L. Rep. 3 Cal. 1.**

See **Hindu Law—Alienation of Ancestral Property. 7.**

CHAMAILI KUAR *v.* RAM PRASAD. **I. L. Rep. 2 All. 267.**

HINDU LAW — ANCESTRAL PROPERTY—*contd.*

—— *Conditional Sale — Foreclosure — Immoveable Property purchased with Ancestral Moveable Property.*] In a suit to recover possession of certain lands acquired by the plaintiff's grandfather *B.* under a deed of conditional sale, dated the 20th February 1847, it appeared that *B.* afterwards foreclosed the mortgage, and that after his death his son *R.* instituted proceedings for, and obtained, possession of the lands which he alienated to the defendant. The plaintiff alleged that such alienation was invalid as against him, on the ground that the land was immoveable ancestral property, and therefore inalienable under the Mitakshara law, and, further, there was no legal necessity for the sale.

Held, that the property must be treated as being ancestral immoveable property. Up to the time of the foreclosure becoming absolute, the interest of the vendee by conditional sale amounted only to securing his money; but *semble*, the effect of the foreclosure was to put an end to the original conditional sale, and to make the property the immoveable property of the person who advanced the money from the commencement. The Court below having found that the alienation of the property in question was not justified by necessity, and decreed the plaintiff's claim, such decree was confirmed.

Per Kennedy, J.—"I do not at all see that even if moveable property came into the hands of a descendant and was converted into immoveable property, that that would not be an ancestral immoveable estate. I do not know of any authority, which shows that the meaning of an immoveable ancestral estate is an ancestral estate which has descended in immoveable form. I am inclined to think that it includes an ancestral estate, no matter whether it descends in moveable or immoveable form." SHAM NARAIN SINGH *v.* RUGHOOBURDIAL. *Ainslie* and *Kennedy*, JJ...**I. L. Rep. 3 Cal. 508; 1 Cal. Rep. 343, 1877.**

HINDU LAW—ANCESTRAL TRADE—

See **Hindu Law—Maintenance of Widow. 9.**

JOHURRA BIBEE *v.* SREE GOPAL MISSER...**I. L. Rep. 1 Cal. 470.**

—— *Ancestral Trade carried on for the benefit of Infants—Liability of Infants.*] Where the ancestral trade of a Hindu was carried on after his

Digitized by Google

HINDU LAW—ANCESTRAL TRADE —*contd.*

death for the benefit of his infant children by their guardian, and debts were incurred by the firm in the course of business:—

Held, that the guardian of a Hindu minor is competent to carry on an ancestral trade on behalf of the minor, but that the minor on whose behalf the ancestral trade is carried on ought not to be held personally liable for the debts incurred in that business, but that, on the analogy of § 247 of the Contract Act IX. of 1872, the share of the minor in the trade is alone liable. *Petum Doss* v. *Ramdhone Doss* (Tay. 279), *Ramlal Thakursidass* v. *Lakhmichund Muniram* (1 Bom. H. C. Rep., Appx. 71), and *Johurra Bibee* v. *Sree Gopal Misser* (I. L. Rep. 1 Cal. 470) followed. JOYKISTO COWAR *v.* NITTYANUND NUNDY. *Garth*, C.J., *Markby* and *Mitter*, JJ... **I. L. Rep. 3 Cal. 738, 1878; 2 Cal. Rep. 440, 1878.**

S. C. under **Civil Procedure Code, Act VIII. of 1859, § 337.**

HINDU LAW — AUTHORITY OF WRITERS.

1. —— Dattaka Mimansa.] "The *Dattaka Mimansa*, which Mr. Colebrooke says 'is no doubt the best treatise on Hindu adoption,' though not quite invariably followed, is generally of high authority in the Bombay Presidency."

Per Westropp, C.J., in GOPAL NARHAR SAFRAY *v.* HANMANT GANESH SAFRAY... **I. L. Rep. 3 Bom. 273-277.**

2. —— *Mayukha—Authority of in Northern Konkan—Comparative Weight of Manu, Mayukha and Mitakshara.*] "We think there are strong reasons for considering that the law of the Mayukha, as that admitted to be highly prized in Gujarat and Bombay, should prevail in this case. The island of Bombay and the Northern Konkan, including in the latter the island of Karanja, formed part of the kingdom of Gujarat." His Lordship then referred to the authorities establishing this, and proceeded (p. 367):—"Connected, then, as Karanja and the rest of the Northern Konkan so frequently were, with Gujarat and Bombay, down to that period" (the cession of the island of Bombay by the King of Portugal in A.D. 1661 to Charles II.), "we should scarcely expect to find a Hindu law of succession prevailing at one side of Bombay harbour different from that existing in the island of Bombay and Gujarat. However, and without overlooking

HINDU LAW — AUTHORITY OF WRITERS—*contd.*

Krishnaji v. *Pandurang* (12 Bom. H. C. Rep. 65), we are satisfied to abide by what is said in the case of *Lallubhai Bapubhai* v. *Mankuverbai* (I. L. Rep. 2 Bom. 418, 419, 420) as to Manu, the Mitakshara and the Mayukha when in competition in this presidency." *Per Westropp*, C.J., in SAKHARAM SADASIV ADHIKARI *v.* SITABAI... **I. L. Rep. 3 Bom. 353-367.**

S. C. under **Hindu Law—Inheritance—Sisters. 1**; and **Hindu Law—Inheritance—Mother. 1.**

3. —— *Viramitrodaya.*] "The Viramitrodaya is a Benares rather than a Bombay authority, and if its doctrine be, as contended, that where there has been an intervening holder between a brother and sister, or a father and daughter, the inheritance opens, and the sister and daughter are excluded, and the next male heir comes in, it has not been followed in the Bombay Presidency." *Per Westropp*, C.J. DHONDU GURAV *v.* GANGABAI... **I. L. Rep. 3 Bom. 369-371, 1879.**

4. —— *Manu — Mitakshara — Vyavahara Mayukha—Viramitrodaya—Smriti Chandrika—Vyavahara Madhava.*] *Per Westropp*, C.J.,—Manu, the Mitakshara and Mayukha are the reigning authorities in the Bombay Presidency. In the Island of Bombay, a general, but not by any means a universal predominance has been given in the Recorder's, Supreme, and High Courts to the Mayukha over the Mitakshara. But high as undoubtedly is the authority of the Institutes of Manu, the Mitakshara and the Mayukha in the Bombay Presidency at large, it cannot be affirmed that the whole of any of those works is in full force in any part of this Presidency. They are all subject to the control of usage. In all there are precepts which, if ever they were practical law, have, for a time beyond the memory of living man, been obsolete.

The Viramitrodaya is not regarded so much in the Bombay Presidency as at Benares, and occupies a place among the works of authority in the Bombay Presidency far below the Mitakshara and Mayukha, and is not accepted when in conflict with them.

Per West, J.—The Smriti Chandrika may apparently be regarded as the governing authority in Madras, and the Vyavahara Madhava is also of weight in that Presidency.

Digitized by Google

HINDU LAW — AUTHORITY OF WRITERS—*contd.*

The Mitakshara is the leading authority on the Hindu law of inheritance for the Bombay Presidency, but it is subject to an exception in the Island of Bombay, where the doctrines of the Vyavahara Mayukha predominate. LALLUBHAI BAPUBHAI *v.* MANKUVERBHAI...**I. L. Rep. 2 Bom. 388, 418, 429, 436, 445.**

5. —— Ratnakara—*Manu*—Mitakshara—Mayukha—Smriti Chandrika—*Balambhatta—Jaganatha—Jimuta Vahana.*] The Ratnakara, though of authority in Mithila, is not so in the Bombay Presidency. The three chief books of authority in Western India are Manu, the Mitakshara and Mayukha. Calluca Bhatta's commentary is much valued in the Bombay Presidency, but Balambhatta is not of much weight. The authority of Jimuta Vahana and Jaganatha respectively stands higher in Bengal than in Bombay. Though not maintaining, on questions of Hindu law, the text of Vrihaspati (3 *Dig.*, pl. cccxxxiii., p. 323) that "no Code is approved which contradicts the sense of *any law promulgated* by Manu;" yet on a question as to which the Smritis vary so much as that of disqualification for inheritance, the pre-eminence assigned by Vrihaspati to Manu should not be forgotten.

The *Smriti Chandrika* is not a book of authority in the Bombay Presidency. *Per Westropp*, C.J., in MURARJI GOKALDAS *v.* PARVATIBAI...**I. L. Rep. 1 Bom. 177, 1876.**

S. C. under **Hindu Law—Disqualification to Inherit. 1.**

HINDU LAW—BETROTHAL.

See **Injunction. 1.**

GUNPUT NARAIN SINGH...**I. L. Rep. 1 Cal. 74.**

HINDU LAW—CAPACITY OF MARRIED WOMAN TO CONTRACT—*Consent of Husband*—Stridhan.] A Hindu wife, who has voluntarily separated from her husband without any circumstances justifying her separation, is liable for a debt contracted by her even for necessaries, although without her husband's consent; but her liability is limited to the extent of any *stridhan* she may have. NATHULAL BHAILAL *v.* JAVHER RAIJI. *Westropp*, C.J., and *N. Harridas*, J...**I. L. Rep. 1 Bom. 121, 1876.**

HINDU LAW — CONTRACT — Applicability of—to Bengal—Mofussil.

See **Interest. 4.**

DEEN DOYAL *v.* KYLAS CHUNDER...**I. L. Rep. 1 Cal. 92.**

HINDU LAW — DISQUALIFICATION TO INHERIT—Blindness.

See infra, **1. 2.**

—— Childless Widowhood.

See **Hindu Law — Inheritance—Daughter. 3.**

AUMIRTOLALL *v.* RAJOONEEKANT...**L. Rep. 2 I. A. 113.**

—— Childless Widowed Indigent Daughter — Benares Law.

See **Hindu Law — Inheritance — Daughter. 3.**

SRIMATI UMA DEYI *v.* GOKOOLANAND...**L. Rep. 5 I. A. 40.**

—— Illegitimacy—Offspring of Adultery.

See **Hindu Law — Inheritance — Illegitimate Son. 4. 5.**

RAHI *v.* GOVIND...**I. L. Rep. 1 Bom. 97.**

NARAYAN *v.* LAVING...**I. L. Rep. 2 Bom. 140.**

1. —— *Blindness.*] According to the Hindu law prevailing in the Bombay Presidency, blindness, to cause exclusion from inheritance, must be congenital.

Therefore, where the widow of a childless intestate Hindu, though proved to have been totally blind for some years before the death of her husband, was admitted not to have been born blind :—

Held, that such blindness did not prevent her from inheriting the property of her husband on his decease. MURARJI GOKALDAS *v.* PARVATIBAI. *Westropp*, C.J., and *Sarjeant*, J...**I. L. Rep. 1 Bom. 177, 1876.**

2. —— *Blindness.*] Incurable blindness, if not congenital, does not, under the Hindu law, exclude the person afflicted, from inheritance. UMABAI *v.* BHAVU PADMANJI. *Westropp*, C.J., and *N. Harridas*, J...**I. L. Rep. 1 Bom. 557. 1877.**

3. —— *Incontinence*—Stridhan.] *Per Turner*, C.J. (Offg).—Unchastity does not deprive a Hindu woman from inheriting the property of

Digitized by Google

HINDU LAW—DISQUALIFICATION TO INHERIT—*contd.*

her grandmother, whether that property was or was not *stridhan*.

Per Pearson and *Spankie*, JJ.—Unchastity does not preclude a Hindu woman from keeping possession, by right of inheritance, of the *stridhan* property left by her maternal grandmother.

Per Oldfield, J.—Unchastity does not prevent a Hindu woman from inheriting *stridhan*. MUSAMUT GANGA JATI *v.* GHASITA...**I. L. Rep. 1 All. 46, 1875.**

4. —— *Incontinence of Widow after Vesting of Estate creates no Forfeiture.*] It is sufficient for the protection of a Hindu widow's right to her husband's estate from forfeiture by reason of unchastity that such right has vested in her before her misconduct. It is not necessary for such protection that she should have acquired possession of the estate before her misconduct. BHAWANI *v.* MAHTAB KUAR. *Pearson* and *Oldfield*, JJ.....**I. L. Rep. 2 All. 171.**

See NEHALO *v.* KISHEN LAL...**Ibid. 150.**

Under **Hindu Law—Inheritance—Widows. 1.**

See HONAMA *v.* TIMANBHAT...**I. L. Rep. 1 Bom. 559.**

Under **Hindu Law—Maintenance of Widow. 12.**

5. —— *Mother — Unchastity — Inheritance to Son.*] A mother, guilty of unchastity before the death of her son, is, by Hindu law, precluded from inheriting his property. RAMNATH TOLAPATTRO *v.* DURGA SUNDARI DEBI. *Mitter* and *Maclean*, JJ. ...**I. L. Rep. 4 Cal, 550, 1878.**

6. —— *Leprosy.*] Incurable leprosy of the sanious or ulcerous type, supervening at any time before partition, excludes the person afflicted with it from sharing in the ancestral estate. ANANTA *v* RAMABAI. *Westropp*, C.J. and *N. Harridas*, J...**I. L. Rep. 1 Bom. 554, 1877.**

7. —— *Hindu Widow—Maintenance—Loss of Caste.*] Since Act XXI. of 1850 came into force, mere loss of caste does not occasion a forfeiture of rights or property. HONAMA *v.* TIMANBHAT. *Westropp*, C.J., and *N. Harridas*, J.....**I. L. Rep. 1 Bom. 559, 1877.**

S. C. under **Hindu Law—Maintenance of Widow. 12.**

HINDU LAW — DIVORCE — *Custom.*] Where a Hindu husband sued his wife for restitution of conjugal rights, and the defendant pleaded divorce, it was *Held*, that though the Hindu law does not contemplate divorce, still, in those districts where it is recognized as an established custom, it would have the force of law. KUDOMEE DOSSEE *v.* JOTEERAM KOLITA. *Kemp* and *Lawford*, JJ.....**I. L. Rep. 3 Cal. 305, 1877.**

HINDU LAW—ENDOWMENT.

See **Dewuttur.**

HINDU LAW—ESCHEAT.

See **Escheat.**

RANEE SOMVET *v.* MIRZA HIMMUT...**L. Rep. 3 I. A. 92.**

HINDU LAW—FORFEITURE OF WIDOW'S ESTATE—*Right of Reversioner.*] In a suit brought by one of the two next reversioners of one *L.*, deceased, against *H.*, the other reversioner, and the widow of *L.*, to establish his right to and to recover possession of half of *L.*'s property, it appeared that the plaintiff, *H.*, and *L.* were three brothers who had separated in estate after their father's death; that on *L.*'s death, *H.*, with the consent of *L.*'s widow, who alleged that her husband and *H.* were undivided in estate, took possession of *L.*'s estate as his heir:—*Held*, that the act of *L.*'s widow divesting herself of her interest in the estate in favour of *H.* did not operate as a forfeiture, so as to bring in the reversionary heirs; and that *H.*'s possession could not on that ground be interfered with during the widow's life; and no other ground for interference being alleged, the claim was dismissed, it being one asking for a declaration of a present right and possession in the property; nor could the Court declare that the plaintiff would have a right of succession after the widow's death, but any reversionary rights which he might hereafter succeed in establishing would not be affected by the widow's divesting herself of her interest in favour of *H.* PRAG DAS *v.* HARI KISHEN. *Pearson* and *Turner*, JJ.....**I. L. Rep. 1 All. 503, 1877.**

S. C. under **Hindu Law—Partition.**

HINDU LAW—GIFT.

See **Hindu Law—Alienation by Widow. 2.**

MADHAVARAYA *v.* TIRTHA SAMI...**I. L. Rep. 1 Mad. 307.**

Digitized by Google

HINDU LAW—GIFT—*contd.*

——Gift by Husband during his Lifetime of all his Estate—Liability of Donee to maintain Donor's Widow.

See **Hindu Law—Maintenance of Widow. 17.**

JAMNA *v.* MACHUL SAHU.....**I. L. Rep. 2 All. 315.**

1. —— *Gift by Father of Self-acquired Immoveable Property to one Son to exclusion of other Sons.*] Although in a Hindu family governed by the Mitakshara law, a sale by the father of self-acquired immoveable property, or a gift of such property to one son to the exclusion of the other sons, may be wrong, and contrary perhaps to the spirit of the Hindu law, as prejudicing the rights of the sons, or tending to limit their means of support, there is no declaration in the Mitakshara that the sale or gift so made would be absolutely void, because the vendor or donor had no power to make it, and the rulings of the Courts have recognized the principle that, though prohibition of certain acts may be implied, yet, where it is not declared that there is absolutely no power to do them, those acts, if done, are not necessarily void.

Where, therefore the father of a Hindu family living under the Mitakshara law, made a gift of certain self-acquired immoveable property to one of his sons, in a suit brought by the other son, to avoid the gift:—

Held, that the gift was not illegal under the Hindu law, and the suit was therefore dismissed. SITAL *v.* MADHO. *Spankie* and *Oldfield*, JJ...**I. L. Rep. 1 All. 394, 1877.**

2. —— *Undivided Family—Sale of Share of Member of—Gift by remaining Members.*] The share of certain members of an undivided Hindu family, in the joint ancestral family property, having been sold to the defendant in execution of a decree obtained against them, the other members of the family subsequently made a verbal gift of their shares of the property to the plaintiff. In a suit for partition brought by the plaintiff against the defendant:—

Held, the auction purchase by the defendant, by introducing a stranger as owner of the rights and interests of two of the members of the undivided family, broke up the constitution of the family as an undivided family. The joint Hindu family is constituted by the union of descendants by heirship from some common ancestor, and there must be connection among its members by blood, relationship, adoption, and marriage. Property held in such coparcenership will be joint family property; the introduction of strangers in blood by auction purchase necessarily breaks up the family relation. The gift to the plaintiff, therefore, was valid. BALLABH DAS *v.* SUNDER DAS. *Spankie* and *Oldfield*, JJ. **I. L. Rep. 1 All. 429, 1877.**

3. —— Res judicata—*Separate Property—Gift to Wife*—Stridhan—*Widow's Power of Alienation.*] *C.*, a Hindu subject to the Mitakshara law, died, leaving two widows, *R.* and *G.* Shortly before his death he had transferred to *R.*, by sale and gift, certain *mauzas* of which he was recorded as the sole proprietor. Among the mauzas transferred by gift was the property in question, the mauza of Ranipur. After *C.*'s death, *J.* and *P.*, his brothers, sued *R.* and *G.* for possession of *C.*'s estate, alleging that it was ancestral property to which they were entitled to succeed as heirs to exclusion of the widows. The suit was dismissed on appeal by the Sudder Court, which held that the property of which *C.* was recorded as the sole proprietor was his separate property. On a review of this decision the Sudder Court held that the mauzas sold by *C.* to *R.* became her absolute property, her alienation of which could not be impeached by the then plaintiffs, *J.* and *P.*, who, however, had title to be regarded as the reversioners after *R.*'s death of the other mauzas received by gift or inherited by her from *C.*, and were competent, as such, to impeach any transfer thereof to other parties. The Sudder Court also held that it was unnecessary to consider the validity of the gift by *C.* to *R.*, inasmuch as the mauzas conveyed by it would devolve on *C.*'s widow *R.* by the Hindu law of succession, as being the separate property of *C.*

J. and *P.* having died, *R.* made a gift of the mauza Ranipur to her agent as a reward for his faithful services. *N.*, the son of *J.*, sued, as the heir of his uncle *C.*, to set aside this gift to the agent as illegal, alleging that the property belonged to *C.* as a separate estate, and that his widow *R.* succeeded to it on his death and took a life interest therein:—

Held, that it might be that the decision in the former suit had not the effect of *res judicata*, since the plaintiff did not come in through or under his father when he was suing as next heir to his uncle.

Digitized by Google

HINDU LAW—GIFT—*contd.*

Held also, on the evidence, that *R.* had acquired the property in suit by gift from her husband; so much, therefore, of the plaintiff's case as rested the claim on the allegation that *R.* succeeded as heir to her husband, failed, but nevertheless the plaintiff was entitled to succeed.

For, admitting that *R.* obtained the estate by gift, by the Hindu law she had no absolute power over immoveables given by her husband. Immoveable property given to a wife by a husband is held on terms similar to those on which property inherited from a husband is held, and her acts in respect of it are liable to question in a similar manner by the next heirs. And the plaintiff was in a position to question the alienation by *R.* as next heir, whether the property was held to be her *stridhan*, or held subject to the ordinary succession of property inherited from her husband.

Held, also, that the gift to the agent, being made only from motives of generosity, was invalid. RUDR NARAIN SINGH *v.* RUP KUAR. *Pearson* and *Oldfield*, JJ.....**I. L. Rep. 1 All. 734, 1878.**

HINDU LAW — GUARDIANSHIP—*Adopted Son—Natural Father.*] The natural father of a son who has been adopted into another family, is not by Hindu law his proper guardian when either of the adoptive parents is living, if such adoptive parent be willing to act as guardian. The residence of the minor with the adoptive parents is a part of the consideration for their adoption of him, and unless ill-treatment of a serious character, or incompetency, on their part be established, they and the survivor of them are the proper guardians. LAKSHMIBAI *v.* SHRIDHAR VASADEV TAKLE. *Westropp*, C.J., and *Melvill*, J.....**I. L. Rep. 3 Bom. 1, 1878.**

HINDU LAW—HUSBAND AND WIFE—Cruelty.

See **Restitution of Conjugal Rights. 3.**

YAMUNABAI *v.* NARRAYAN...**I. L. Rep. 1 Bom. 164.**

—— Divorce.

See **Hindu Law—Divorce.**

KUDOMEE *v.* JOTEERAM.....**I. L. Rep. 3 Cal. 305.**

HINDU LAW—HUSBAND AND WIFE—*contd.*

—— Marriage in *Asura* Form.

See **Hindu Law—Marriage in Asura Form.**

JAIKISONDASS *v.* HARKISONDAS...**I. L. Rep. 2 Bom. 9.**

—— Wife's Power to contract.

See **Hindu Law—Capacity of Married Woman to Contract.**

NATHUBHAI *v.* JAVHER.....**I. L. Rep. 1 Bom. 121.**

—— Wife's Right to Separate Maintenance.

See **Hindu Law—Maintenance of Wife. 3. 4.**

—— *Wife absenting herself from Husband.*] The mere circumstance that a Hindu marries a second wife in the lifetime of his first wife, will not justify the latter in leaving him. *Per N. Harridas*, J., in NATHUBHAI BHAILAL *v.* JAVHER RAIJI.....**I. L. Rep. 1 Bom. 121, 123.**

S. C. under **Hindu Law—Capacity of Married Woman to Contract.**

HINDU LAW—ILLEGITIMATE SON—Right of—to inherit.

See the cases under **Hindu Law—Inheritance — Illegitimate Son.**

—— Right of—to maintenance.

See the cases under **Hindu Law—Maintenance of Illegitimate Son.**

HINDU LAW — IMPARTIBLE PROPERTY—The impartibility of property does not destroy its nature as joint family property, or render it the separate estate of the last holder, so as to destroy the right of another member of the joint family to succeed to it in preference to those who would be his heirs if the property were separate. DOORGA PERSAD SINGH *v.* DOORGA KONWARI...**I. L. Rep. 4 Cal. 190; L. R. 5 I. A. 149; 3 Cal. Rep. 31, 1878.**

S. C. under **Declaratory Decree. 9.**

And **Res Judicata. 4.**

HINDU LAW — INCONTINENCE OF WIDOW.

See **Hindu Law—Disqualification to Inherit. 3. 4. 5. 7.**

Digitized by Google

HINDU LAW — INFANT — Liability of Infant for Debts incurred in Ancestral Trade carried on for his Benefit.

See **Hindu Law—Ancestral Trade.**

JOYKISTO COWAR *v.* NITTYANUND NUNDY...**I. L. Rep. 3 Cal. 783.**

HINDU LAW — INHERITANCE — ADOPTED SON — *Succession of to Adoptive Mother's Estate.*] An adopted son, under the Dattaka Mimamsa and Mitakshara succeeds to the property which has descended to his adoptive mother as heiress of her father. SHAM KUAR *v.* GAYA DIN...**I. L. Rep. 1 All. 255, 1876, F. B.**

HINDU LAW — INHERITANCE — ASCETIC—*Succession to the Property of Ascetics.*] The principle of succession upon which one member of an order of ascetics succeeds to another is based entirely on fellowship and personal association with that other, and a stranger, though of the same order, is excluded. KHUGGENDER NARAIN CHOWDHRY *v.* SHARUPGIR OGHORENATH. *Morris* and *Prinsep*, JJ...**I. L. Rep. 4 Cal. 543, 1878.**

HINDU LAW — INHERITANCE — BROTHER—Undivided Family — Nephews.

See **Hindu Law — Inheritance — Nephews.**

BHIMUL DOSS *v.* CHOONEE LALL... **I. L. Rep. 2 Cal. 379.**

1. —— *Bengal Law — Brothers — Half-Brothers.*] In Bengal the brother of the whole blood succeeds, in the case of an undivided immoveable estate, in preference to a brother of the half-blood.

Tiluck Chunder Roy v. *Ram Lukhu Dossee* (2 W. Rep. 41), *Kylash Chunder Sircar* v. *Goorao Churn Sircar* (3. W. Rep. 43), and *Shib Narain Bose* v. *Ram Nidhu Bose* (9 W. Rep. 87) overruled. RAJKISHORE LAHOORY *v.* GOVIND CHUNDER LAHOORY...**I. L. Rep. 1 Cal. 27, 1857, F. B.; S. C. 24 W. Rep. 234; L. Rep. 4 I. A. 153, n.**

2. —— *Succession of Half-Brother in a Joint Family—Dayabhaga.*] According to the Dayabhaga a brother of the whole blood in a joint family succeeds in preference to a brother of the half-blood to the share of a deceased brother. *Rajkishore Lahoory* v. *Gobind Chunder Lahoory* (I. L. Rep. 1 Cal. 27; 24 W. Rep. 234; and L. Rep. 4 I. A. 153, note) approved. SHEO SOONDARY *v.* PIRTHEE SING... **L. Rep. 4 I. A. 147.**

HINDU LAW — INHERITANCE — BROTHER—*contd.*

3. —— *Undivided Family — Brothers — Nephews.*] When in an undivided Hindu family living under the Mitakshara law, a brother dies without leaving issue, but leaving brothers, and nephews, the sons of a predeceased brother, the interest in the joint estate of the brother so dying does not pass on his death to his surviving brothers, but on partition, the whole estate, including the interest of the brother so dying, is divisible; and the right of representation secures to the sons or grandsons of a deceased brother, the share which their father or grandfather would have taken, had he survived the period of distribution. *Madho Singh* v. *Bindessery Roy* (H. C. Rep. N.-W. P. 1868, p. 101) overruled. DEBI PARSHAD *v.* THAKUR DIAL... **I. L. Rep. 1 All. 105, 1875, F. B.**

Followed in BHIMUL DOSS *v.* CHOONEE LALL..... **I. L. Rep. 2 Cal. 379.**

See **Hindu Law — Inheritance — Nephews.**

HINDU LAW — INHERITANCE — BROTHER'S DAUGHTER'S SON — *Brother's Daughter's Son — Great-Grandson of Grandfather.*] The great-grandson of the grandfather of a deceased Hindu is, according to the Dayabhaga, entitled to succeed to his estate, in preference to the brother's daughter's son. JUGGUT NARRAIN SINGH *v.* THE COLLECTOR OF MANBHOOM. *Garth*, C. J., and *Morris*, J.....**I. L. Rep. 4 Cal. 413, n., 1877.**

See also *in the matter of the Petition of* ODOYCHURN MITTER. **Ibid., p. 411.**

Under **Certificate to collect Debts. 1.**

HINDU LAW — INHERITANCE — DAUGHTERS.

See **Hindu Law — Inheritance — Daughter's Sons. 2.**

BAIJNATH *v.* MAHABIR. **I. L. Rep. 1 All. 608.**

1. —— *Daughter's Estate—Will.*] According to Hindu law in the Bombay Presidency, a daughter succeeding to her father takes an absolute and several estate in his immoveable property, and if she have no issue, may make a gift of it during her lifetime, or devise it by will;

Digitized by Google

HINDU LAW — INHERITANCE — DAUGHTERS—*contd.*

and the devisee will be entitled to hold it against her own or her father's heirs. HARIBAT *v.* DAMODARBHAT. *Westropp*, C. J., and *West*, J. ...**I. L. Rep. 3 Bom. 171, 1878.**

Followed in BABAJI *v.* BALAJI...**I. L. Rep. 5 Bom. 660.**

See BULAKIDAS *v.* KESHAVLAL...**I. L. Rep. 6 Bom. 86.**

2. —— *Daughter's Succession by Survivorship not defeated by becoming a Childless Widow.*] Although a daughter, who is a childless widow, is incompetent, according to the Bengal school, to take by inheritance from her father, yet where two daughters have already succeeded jointly by inheritance to their father's estate, and at the death of one of them the survivor is a childless widow, the latter will nevertheless take by survivorship the whole estate. Her disqualification to inherit existing at the death of her sister does not destroy the heritable right which has once vested, nor the right of succession by survivorship to her sister, which is incident thereto. AUMRITOLALL BOSE *v.* RAJONEEKANT MITTER.....**L. Rep. 2 I. A. 113; 23 W. R. 214; 15 Beng. L. R. 10, 1874.**

S. C. under **Admission,** and under **Hindu Law — Inheritance — Daughter's Son,** and under **Limitation. 18.**

3. —— *Hindu Law of Benares—Succession of Indigent Daughter though a Childless Widow.*] According to Hindu law, as it obtains in *Benares*, failing a maiden daughter, the succession to a deceased father's estate devolves on the married daughter who is indigent, to the exclusion of the wealthy daughters, and the indigent daughter does not lose her right of succession by becoming a childless widow in her father's lifetime; nor in the case of inheritance by daughters is any preference given to a daughter who has, or is likely to have, male issue, over a daughter who is barren or a childless widow. SRIMATI UMA DEYI *v.* GOKOOLANUND DAS MAHAPATRA... **L. Rep. 5 I. A. 40, 1878.**

S. C. **I. L. Rep. 3 Cal. 587,** *sub nom.* WOOMA DAEE *v.* GOKOOLANUND DAS.

S. C. under **Hindu Law—Adoption. 8.**

HINDU LAW — INHERITANCE — DAUGHTERS—*contd.*

4. —— *Mitakshara Law*—Stridhan.] Under the Mitakshara law a daughter's estate inherited from her father is a limited and restricted estate only, and not *stridhan*. On her death the next heirs of her father succeed to it, and not her husband or other heirs. CHOTAY LALL *v.* CHUNNOO LALL...**L. Rep. 6 I. A. 15, 1878; I. L. Rep. 4 Cal. 744; 3 Cal. Rep. 465.**

S. C. under **Jain Law. 3.**

5. —— Comparative proverty is the only criterion for settling the claims of daughters on their father's estate. *Bakubai* v. *Manchhabai* (2 Bom. H. C. Rep. 5) and *Poli* v. *Narotum Bapu* (6 Bom. H. C. Rep. 183) followed.

Where, therefore, two of four daughters brought suits claiming each a moiety of their father's estate, to the exclusion of the two remaining daughters and such remaining daughters resisted those suits on the ground that they were entitled to the whole estate, being poor and needy, while their sisters were rich, and it was found that such remaining daughters were, as compared with their sisters, poor and needy, the Court dismissed the suits. AUDH KUMARI *v.* CHANDRA DAI. *Pearson* and *Oldfield*, JJ...**I. L. Rep. 2 All. 561, 1879.**

HINDU LAW — INHERITANCE — DAUGHTER'S SONS—A daughter's son is not entitled by Hindu law to succeed as heir to his maternal grandfather's estate, so long as any daughter not disqualified, or in whom a right of inheritance has once vested, survives. AUMRITOLALL BOSE *v.* RAJONEEKANT MITTER...**L. Rep. 2 I. A. 113, 1874.**

S. C. under **Admission** and **Hindu Law—Inheritance—Daughters 2. Limitation. 18.**

2. —— *Succession of Daughters—Reversioners.*] A daughter's son is not entitled by Hindu law to succeed as heir to his maternal grandfather's estate, so long as any daughter not disqualified, or in whom a right of inheritance has once vested, survives.

Where, therefore, *R.* died leaving two daughters *B.* and *P.*, and *P.* died shortly after her father, leaving two sons *R.* and *M.*, minors, and subsequently to her deatb *B.*, as the guardian of her minor sons, and *A.*, as the guardian of *P.*'s minor sons, executed a mortgage of certain immoveable property, part of the estate of

Digitized by Google

HINDU LAW — INHERITANCE — DAUGHTER'S SONS—*contd.*

R.,—*Held*, that a suit brought during the lifetime of *B.* by her sons and by the sons of *P.* to set aside the mortgage and recover possession of the property was not maintainable. *Amritolal Bose* v. *Rajoneekant Mitter* (L. Rep. 2 I. A. 113; 15 Beng. L. Rep. 10; 23 W. Rep. 214) followed. BAIJNATH *v.* MAHABIR. *Stuart*, C.J., and *Spankie*, J...**I. L. Rep. 1 All. 608, 1878.**

HINDU LAW — INHERITANCE — FATHER'S SISTER'S SON — Bandhus — Samanodakas — Sapindas — *Great-Grandson of Common Ancestor — Appointed Daughter.*] The great-grandson of the great-great-grandfather of a deceased Hindu, is by Hindu law entitled to succeed in preference to the father's sister's son.

The former, whether a *sapinda* or *samanodaka*, is in one of those two classes, and, whether in one or the other, is in the line of male descendants from the common ancestor, which must be exhausted before the *bandhus* are resorted to, in order to discover the heir of the last proprietor.

Supposing that the custom of the appointment by a sonless father, of a daughter, or her son as a substitution for a son, still exists, yet, inasmuch as it breaks in upon the general rules of succession, whenever an heir claims to succeed by virtue of that rule, he must bring himself very clearly within it. From the text of Manu, Ch. IX., Sec. 127, it would appear that the act of appointment must proceed from the father himself, and be made by him; and it would require positive law, or evidence of custom from which the law may be presumed, that, supposing the rule still to exist that a father may appoint a daughter for this purpose, it is a part of it that he may delegate the appointmen to his sons.

Held, therefore, that the father's sister's son could not set up that his mother was appointed after her father's death as a special daughter from whom might proceed a son who should stand in the place of a son's son. THAKOOR JEEBNATH SINGH *v.* THE COURT OF WARDS...**L. Rep. 2 I. A. 163; 23 W. R. 409; 15 Beng. R. L. 190, 1875.**

HINDU LAW — INHERITANCE — GRANDSON OF FATHER'S BROTHER — Excludes Brother's Daughter's Son.

See **Certificate to collect Debts. 1.**

ODOYCHURN MITTER.....**I. L. Rep. 4 Cal. 411.**

HINDU LAW — INHERITANCE — HALF-BROTHER—Full Sister preferred to—Separated.

See **Hindu Law—Inheritance—Sister. 1.**

SAKHARAM S. ADHIKARI *v.* SITABAI.....**I. L. Rep. 3 Bom. 353.**

HINDU LAW — INHERITANCE — ILLEGITIMATE SON — *Sudras.*] The ordinary Hindu law of inheritance relating to Sudras admits an illegitimate son to a half-share with legitimate sons; and if there be no legitimate son, and no legitimate daughter, or son of such daughter, the illegitimate son by a female slave or continuous concubine takes the whole estate. If there be a legitimate daughter, or legitimate son of such a daughter, the illegitimate son would take only half the share of a legitimate son; and such daughter or daughter's son would take the residue of the property subject to the charge of maintaining the widow of the deceased proprietor. *Per Westropp*, C.J., in GOPAL NARHAR SAFRAY *v.* HANMANT GANESH SAFRAY.....**I. L. Rep. 3 Bom. 273-288.**

2. —— *Bengal Law — Sudras — Marriage between Persons of different Castes.*] According to the doctrine of the Bengal school of Hindu law, a certain description only of illegitimate sons of a Sudra by an unmarried Sudra woman is entitled to inherit the father's property in the absence of legitimate issue, *viz.*, the illegitimate sons of a Sudra by his female slave or a female of his slave.

Per Mitter, J.—A valid marriage between persons in different sub-divisions of the Sudra caste is impossible unless sanctioned by any peculiar social custom governing them, and no presumption in favour of the validity of such a marriage can be made, though long cohabitation has existed between the parties.

Per Markby, J.—*Quære*, whether there is any legal restriction upon such a marriage. NARAIN DHARA *v.* RAKHAL GAIN. *Markby* and *Mitter*, JJ.....**I. L. Rep. 1 Cal. 1, 1875.**

S. C. under **Hindu Law—Marriage.**

3. —— *Sudras—Concubine—Female Slave.*] Under the Mitakshara law, a son begotten of a female slave, by a Sudra, takes the whole estate, if there be no sons of a wedded wife, or daughters of such a wife, or sons of daughters; but if there be any of the above-named heirs, the son of a female slave will participate for half a share

Digitized by Google

HINDU LAW — INHERITANCE — ILLEGITIMATE SON—*contd.*

only. There is no distinction between a son born to a Sudra of a slave and of a concubine. The illegitimate offspring of a kept woman or continuous concubine amongst Sudras are on the same level as to inheritance as the issue of a female slave by a Sudra.

Held, therefore, that the plaintiff, the illegitimate son of an Ahir by a continuous concubine, was entitled to succeed to his deceased father's estate in preference to a daughter of a legitimate son of his father who died in his father's life-time. SARASUTI *v.* MAMU. *Pearson* and *Oldfield*, JJ.....**I. L. Rep. 2 All. 134, 1879.**

S. C. under **Declaratory Decree. 14.**

4.——*Sudras—Maintenance*—Dasi Putra.] The general result of the authorities, both juridical and forensic, is that amongst the three regenerate classes of Hindus (Brahmans, Kshatriyas, and Vaishyas) illegitimate children are entitled to maintenance ; but unless there be local usage to the contrary, cannot inherit, and that amongst the Sudra class, illegitimate children, in certain cases at least, do inherit.

Vijnyanesvara, the author ot the Mitakshara, holds that, amongst Sudras, the father of an illegitimate son by a *Dasi*, may in his (the father's,) lifetime allot to such son a share equal to that of a legitimate son ; and if the father die without making such an allotment, the illegitimate son by the *Dasi* is entitled to half the share of a legitimate son ; and if there be no legitimate son, and no legitimate daughter or son of such a daughter, the illegitimate son by the *Dasi* takes the whole estate. If, however, there be a legitimate daughter, or legitimate son of such a daughter, the illegitimate son would take only half the share of a legitimate son ; and such daughter or daughter's son would take the residue of the property, subject to the charge of maintaining the widow of the deceased proprietor.

The law administered in this Presidency has been in accordance with this doctrine. The *dictum* of Lord Cairns at 13 Moo. I. A., p. 506, in *Sri Gajapathi Radhika Patta* v. *Sri Gajapathi Nilamani Patta Maha Devi* :—"Supposing the sons, or either of them, to have been legitimate, the widow (of Padmanbha) could have been entitled to maintenance only. Had both sons been illegitimate, their claim, unless some special custom governed the case, would have been to maintenance only. In this last-named case the widow would have had the ordinary estate of a Hindu widow,"—on the supposition that Padmanbha was a Sudra, as erroneously stated in the marginal note, could not be reconciled with any school of Hindu law; but on the supposition that when so speaking, Lord Cairns was regarding the *status* of these sons from the same point of view as that of the Madras High Court,—*viz.*, as illegitimate sons of a Rajput, the *dictum* would be completely in accordance with Hindu law.

HINDU LAW — INHERITANCE — ILLEGITIMATE SON—*contd.*

The condition that in order to entitle the illegitimate offspring of a Sudra woman by a Sudra to inherit the property of the latter, or a share in it, she should never have been married, has in practice been discarded in the Bombay Presidency.

The custom of remarriage of wives and widows, called *Pât* amongst Marathas, and *Nâtra* amongst the inhabitants of Gujarat, considered.

The sons of a *Punarbhu* (twice-married woman) by a duly contracted *Pât* marriage, *i.e.*, in accordance with the custom of the caste, are legitimate ; and rank, as to the right of inheritance and extent of shares, on a par with the sons by a *Lagna* marriage (*i.e.*, first marriage of a woman).

In the Bombay Presidency, under ordinary circumstances amongst Sudras, the illegitimate offspring of a kept woman, or continuous concubine, are on the same level as to inheritance as the issue of a female slave by a Sudra.

G., a Sudra woman, was married to *T.*, also a Sudra, by *Pât* marriage, without having received a *chor-chithi* from her first husband, who was then living, or any other sanction from him of her marriage to *T.* :—

Held, that the intercourse between *G.* and *T.* was adulterous, and that the plaintiff, being the issue thereof, could not take as heir, even to the extent of half a share, and was not a *Dasi putra* within the scope of Yajnyavalkya's text, or recognized as such by the commentators, but that, having been recognized as his son by *T.*, the plaintiff was entitled to maintenance ; and the Lower Court was directed to fix a liberal and suitable maintenance, having due regard to the extent and value of *T.*'s estate. RAHI v. GOVIND TEJA. *Westropp*, C.J., and *Larpent*, J.....**I. L. Rep. 1 Bom. 97, 1876.**

Digitized by Google

HINDU LAW — INHERITANCE — ILLEGITIMATE SON—*contd.*

5. —— *Gosavis — Custom — Maintenance.*] The rule laid down in *Rahi* v. *Govind* (I. L. Rep. 1 Bom. 97) that among the three regenerate classes, *viz.*, Brahmans, Kshatriyas, and Vaishyas, illegitimate children cannot inherit, unless there be a local usage to the contrary, is applicable to Gosavis.

A custom recognizing a right of heirship in the son of a Gosavi by a woman who in the lifetime of her previous husband, and without his consent, had married the Gosavi, would be a bad custom.

The right of an illegitimate son to maintenance out of his deceased father's property cannot be decided in a suit which concerns only a portion of that property, and to which all persons in possession of the rest of the father's property are not parties. NARAYAN BHARTHI *v.* LAVING BHARTHI. *Westropp*, C.J., and *Melvill*, J...**I. L. Rep. 2 Bom. 140, 1877.**

6. —— *Sudras—Adultery.*] The illegitimate son of a Sudra by a woman who was a married woman at the time of her forming an adulterous connexion with his father, is not entitled to inherit, but only to maintenance out of his father's estate. VIRAMUTHI UDAYAN *v.* SINGARAVELU. *Kindersley* and *Busteed*, JJ...**I. L. Rep. 1 Mad. 306, 1877.**

HINDU LAW — INHERITANCE — MISSING PERSON — Presumption of Death.

See **Evidence. 21.**

PARMESHAR *v.* BISHESHAR...**I. L. Rep. 1 All. 53.**

HINDU LAW — INHERITANCE — MOTHER — Unchastity of — excludes from Inheritance to Son.

See **Hindu Law—Disqualification to Inherit. 5.**

RAMNATH *v.* DURGA SUNDARI. **I. L. Rep. 4 Cal. 550.**

—— *Estate of Mother succeeding to her Son—Immoveable Property.*] It is settled law that a mother succeeding as heir to her son, takes only such a limited estate in his immoveable property, as a Hindu widow takes in the immoveable property of her husband dying without leaving male issue, and that on her death her son's heir is the person who succeeds to such property.

HINDU LAW — INHERITANCE — MOTHER—*contd.*

SAKHARAM SADASHIV ADHIKARI *v.* SITABAI. *Westropp*, C.J., and *Kemball*, J...**I. L. Rep. 3 Bom. 353, 1879.**

S. C. under **Hindu Law—Inheritance—Sister. 1.**

And **Hindu Law—Authority of Writers. 2.**

HINDU LAW — INHERITANCE — NEPHEWS — Undivided Family — Right of Nephews to succeed to Estate of Deceased Uncle.

See **Hindu Law — Inheritance — Brothers. 3.**

DEBI PARSHAD *v.* THAKUR DIAL...**I. L. Rep. 1 All. 105.**

—— *Mitakshara Law—Undivided Family—Inheritance—Brothers—Nephews.*] In an undivided Hindu family governed by the Mitakshara law, if a brother dies leaving no issue, but leaving brothers and orphan nephews, who are members of the joint family, his interest in the family property does not pass to the surviving brothers to the exclusion of the orphan nephews, but the latter take by representation the share that their deceased father or fathers would have taken had he or they survived. *Debi Parshad* v. *Thakur Dial* (I. L. Rep. 1 All. 105) followed. BHIMUL DOSS *v* CHOONEE LALL...**I. L. Rep. 2 Cal. 379, 1877, F. B.**

HINDU LAW—INHERITANCE—PRIMOGENITURE—*Impartible Talook*—Kolachar—*Family Custom—Mitakshara Law.*] A custom of descent according to the law of primogeniture may exist by *Kolachar* or family custom, although the estate may not be what is technically known either as a *Raj* in the north of India, or as a *Polliam* in the south of India.

Where the family, to which ancestral impartible property belongs, is governed by the law of the Mitakshara, that law in the event of a holder dying without male issue would, if the family be undivided, give the succession to the next collateral male heir in preference to the widow or daughters of the last possessor. Such property while the family remains a joint and undivided family in the full sense of the term, cannot be treated as separate property. *Katama Natchiar* v. *The Rajah of Shivagunga* (9 Moo. I. A. 530) approved.

Digitized by Google

HINDU LAW—INHERITANCE—PRIMOGENITURE—*contd.*

Whether the general *status* of the family be joint or divided, property which is joint will follow one, and property which is separate will follow another course of succession.

Since in documents between Hindus and in the Mitakshara itself it is not unusual to find the leading members of a class alone mentioned when it is intended to comprehend the whole class, a written statement of a family custom, whereby an impartible estate passes, in the event of the holder dying without issue, *to his younger brother or his eldest son*, was construed, not as confining the collateral succession to the two cases mentioned, but as providing generally that on failure of the direct male line, the nearest male heir in the collateral line should succeed. CHOWDRY CHINTAMAN SINGH *v.* MUSST. NOWLUKHO KONWARI...**L. Rep. 2 I. A. 263; 24 W. R. 255, 1875.**

S. C. **I. L. Rep. 1 Cal. 153,** *sub nom.* CHINTAMUN SINGH *v.* NOWLUKHO KONWARI.

HINDU LAW—INHERITANCE—RELINQUISHMENT BY SON.

See **Hindu Law—Relinquishment of Share by Son.**

BALKRISHNA T. TENDULKAR *v.* SAVITRIBAI...**I. L. Rep. 3 Bom. 54.**

HINDU LAW—INHERITANCE—SANIASIS—Guru—Chela.] Amongst the general tribe of *fakirs* called *Saniasis*, a right of inheritance, strictly so speaking, to the property of a deceased *guru*, or spiritual preceptor, does not exist; but the right of succession depends upon the nomination of one among his disciples by the deceased *guru* in his lifetime, which nomination is generally confirmed by the *mahants* of the neighbourhood, assembled together. Where no nomination has been made, the succession is elective, the *mahants* and principal persons of the sect in the neighbourhood choosing from amongst the disciples of the deceased *guru* the one who may appear to be the most qualified to be his successor, installing him then and there on the occasion of performing the funeral ceremonies of the late *guru*.

Where, therefore, a *chela* sued for possession of a village belonging to his deceased *guru*, founding his claim on his right of succession as *chela*, without alleging that he had been nominated by the deceased as his successor, and confirmed afterwards, or that in consequence of the omission of the deceased to appoint the successor, he had been elected by the neighbouring *mahants* and members of the sect, as successor to the deceased:—

Held, that such a suit was unsustainable. *Nirunjun Barthee* v. *Padarath Barthee* (S. D. A. N.-W. P. 1864, Vol. I., p. 512), followed. MADHO DAS *v.* KAMTA DAS. *Pearson* and *Spankie*, JJ..... **I. L. Rep. 1 All. 539, 1878.**

HINDU LAW—INHERITANCE—SISTERS.

1. —— *Right of Sister to inherit in preference to Half Brother.*] A Hindu died, possessed of immoveable property situated in the District of Thana, in the Northern Konkan, leaving him surviving, a mother, a full sister, and a separated half-brother. His mother succeeded him as his heir, and held possession of the property until her death, when his sister caused her name to be entered in the Government books as successor. In a suit by the half-brother for a declaration of his right to the estate of his deceased brother:

Held, that the full sister, and not the half-brother, was entitled to succeed to the property of her deceased brother.

The decision in *Vinayak Anandrav* v *Lakhsmibai* (1 Bom. H. C. Rep. 117, 126; S. C. 9 Moo. I. A. 516; S. C. 3 Cal. W. Rep. P. C. 41) must be regarded as founded not only on the Mayukha, but also on the special construction of the first passage of Ch. II., Sec. IV. of the Mitakshara —"On failure of the father, brethren share the estate" given to it by Nanda Pandita and Balambhatta, as including sisters within the term "brethren," and of general authority, and as laying down the general rule of succession as to sisters in the Bombay Presidency, except when an invariable and ancient special usage to the contrary is alleged and proved by him who avers it.

Semble, the law of the Mayukha should prevail in the Northern Konkan. SAKHARAM SADASHIV ADHIKARI *v.* SITABAI. *Westropp*, C.J., and *Kemball*, J.....**I. L. Rep. 3 Bom. 353, 1879.**

Followed by the same Bench in MAHANTAPA *v.* NILGANGAWA preferring the claim of a sister

Digitized by Google

HINDU LAW—INHERITANCE—SISTERS—*contd.*

of the deceased to that of the widow of his separated paternal uncle.....**Ibid. 368, n.**

S. C. under **Hindu Law—Inheritance—Mother. 1.**

S. C. under **Hindu Law—Authority of Writers. 2.**

2. —— *Sister's Right to inherit—Viramitrodaya.*] Under the Hindu law prevailing in the Bombay Presidency, a sister succeeds to the estate of her deceased brother in preference to a separated and remote male relative of the deceased.

Per Westropp, C.J.—The Viramitrodaya is an authority in Benares rather than in Bombay, and its doctrine (if it be its doctrine)—that, where there has been an intervening holder between a brother and sister, or a father and daughter, the inheritance opens, and the sister and daughter are excluded, and the next male heirs come in—has not been followed in the Bombay Presidency.

Vinayek Anandrav v. *Lakshmibai* (1 Bom. 117, 126; S.C. 9 Moo. I. A. 561; and 3 W. Rep. P. C. 41) followed. DHONDU GURAV *v.* GANGABAI. *Westropp*, C.J., and *Melvill*, J...**I. L. Rep. 3 Bom. 369, 1879.**

HINDU LAW — INHERITANCE — STRIDHAN—The expression "family of her husband" in Chap. IV., Sec. III., pl. 10, of the Daya Bhaga is wide enough to include the husband's father's sister's son. With respect, therefore, to property given to a married woman after her marriage by her husband's father's sister's son, the brother, mother, and father are preferable heirs to the husband. HURRYMOHUN SHAHA *v.* SHONATUN SHAHA. *Jackson* and *McDonnell*, JJ.....**I. L. Rep. 1 Cal. 275, 1876.**

HINDU LAW — INHERITANCE — WIDOW—Of Separated Son.

See **Hindu Law—Relinquishment of Share by Son.**

BALKRISHNA T. TENDULKAR *v.* SAVITRIBAI.....**I. L. Rep. 3 Bom. 54.**

—— Of Separated Paternal Uncle postponed to Sister of Deceased.

See **Hindu Law—Inheritance—Sister. 1.**

MAHANTAPA *v.* NILGANGAWA...**I. L. Rep. 3 Bom. 368, n.**

HINDU LAW — INHERITANCE — WIDOW—*contd.*

1. —— *Incontinence — Forfeiture.*] *Held* that under the Mitakshara law, a widow who has once inherited the separate estate of her husband, does not forfeit the same by reason of subsequent incontinence. *Kery Kolitany* v. *Moneeram Kolita* (13 Beng. L. Rep. 1; S. C. 19 W. Rep. 367) followed. NEHALO *v.* KISHEN LAL...**I. L. Rep. 2 All. 150, 1879, F. B.**

See BHAVANI *v.* MAHTAB KUAR...**I. L. Rep. 2 All. 171.**

Under **Hindu Law—Disqualification, to Inherit. 4.**

See HONAMA *v.* TIMANBHAT...**I. L. Rep. 1 Bom. 559.**

Under **Hindu Law—Maintenance of Widow. 12.**

2. —— *Mitakshara Law—Joint Estate of two or more Widows—Separate Enjoyment—Survivorship.*] According to the Mitakshara law as it prevails in Southern India, two or more lawful wives (*patnis*) take a joint estate for life in their husband's property, with rights of survivorship and an equal beneficial enjoyment. The view that the law of Southern India differs on this point from the law of Hindustan, and that by the law of Southern India the senior widow by date of marriage succeeds in the first instance, the others inheriting in turn as they survive, but being in the mean time only entitled to be maintained by the first, is not supported by the decisions of the Courts, nor by the sanction of the Mitakshara or of any treatise of paramount authority in Madras.

Although widows so taking have no right to enforce an absolute partition of the joint estate between them they have the power to arrange for separate enjoyment of their shares, their respective rights by survivorship and otherwise remaining unaffected. *Jijoiyamba Bayi Saha* v. *Kamakhi Bayi Saha* (3 Mad. H. C. Rep. 424) affirmed. SRI GAJAPATHI NILAMANI PATA MAHA DEVI GURU *v.* SRI GAJAPATHI RADHAMAN PATTA MAHA DEVI GURU...**L. Rep. 4 I. A. 212, 1877; I. L. Rep. 1 Mad. 290; 1 Cal. Rep. 97.**

[*Note.*—At p. 221 L. R. 4 I. A. their Lordships cite, without disapproving it, the proposition of the Chief Justice that "a case may be made out entitling one of several widows to the relief of separate possession of a portion of the inheritance. We have no doubt that such relief can

Digitized by Google

HINDU LAW — INHERITANCE — WIDOW—*contd.*

and ought to be granted when, from the nature or situation of the property, and the conduct of the co-widows or co-widow, it appears to be the only proper and effectual mode of securing the enjoyment of her distinct right to an equal share of the benefits of the estate."

See **I. L. Rep. 1 Mad. 300.**

3.—— *Widow of First Cousin*—Gotraja Sapinda—Sapinda *Relationship*—Gotraja Sapinda.] In the Presidency and Island of Bombay, the wife is a *Sapinda* as well as a *Gotraja* of her husband, and on his death without leaving a son or grandson, she, on the subsequent death of his separated *Sapinda*, and in the absence of any specially designated heir entitled to preference, ranks in the same place in order of succession to the property of such deceased *Sapinda* as her husband would have occupied if living. Thus the widow of a first cousin *exparte paternâ* of the deceased *propositus* was held prior in order of a succession to a fifth male cousin *ex parte paternâ* of the same.

That is to say, a wife becomes by marriage a *Gotraja Sapinda* of her husband and his *Gotraja Sapindas*, and as such succeeds next in order to her deceased husband, representing a collateral line, according to the law of the Mitakshara, by which the widow of a *Gotraja Sapinda* of a nearer collateral line is entitled to precedence over the male *Gotraja* in a more remote line. LALLUBHAI BAPUBHAI *v.* MANKUVARBAI. **I. L. Rep. 2 Bom. 388, 1876, F. B.**

HINDU LAW—INTEREST — *Dam-dupat*, Rule of, not applicable to Suits in Bengal Mofussil.

See **Interest. 4.**

DEEN DOYAL PORAMANICK *v.* KYLAS CHUNDER PAL CHOWDHRY. **I. L. Rep. 1 Cal. 92.**

1.——Dam-dupat.] The Hindu Law rule of *dam-dupat* does not apply where the defendant is other than a Hindu. NANCHAND HANSRAJ *v.* BAPU SAHEB RUSTUMBHAI. *Melvill* and *Kemball*, JJ.....**I. L. Rep. 3 Bom. 131, 1878.**

See this case under **Interest. 6.**

2.—— *Decree.*] The rule of Hindu Law which limits the amount of interest recoverable at any one time to the amount of the principal, does not apply to an amount recoverable in execution of a decree of a Civil Court. BAL-

HINDU LAW—INTEREST—*contd.*

KRISHNA BALCHANDRA *v.* GOPAL RAGHUNATH. *West* and *N. Harridas*, JJ...**I. L. Rep. 1 Bom. 73, 1875.**

3.—— *Mortgage.*] But it does apply to a mortgage by a Hindu widow. Interest not exceeding the principal allowed, following the rule of *Dam-dupat*. RAMCHANDER MANKESHWAR *v.* BHIMRAV RAVJI. *Westropp* and *Melvill*, JJ.....**I. L. Rep. 1 Bom. 577, 1877.**

HINDU LAW — LEGITIMACY — *Child born in Wedlock.*] A child, born in wedlock, of a Hindu husband and wife, is not rendered illegitimate by the circumstance that he was begotten before their marriage. THE COLLECTOR OF TRICHINOPOLY *v.* LAKKAMANI...**L. Rep. 1 I. A. 282, 293; 14 Beng. L. R. 115; 21 W. R. 358, 1874.**

S. C. under **Polliem. 1.**

HINDU LAW—LIABILITY OF ANCESTRAL ESTATE IN THE HANDS OF THE HEIR, FOR THE DEBTS OF THE ANCESTOR—Under the Mitakshara and the Mayukha, the son takes a vested interest in ancestral estate at his birth, but that interest is subject to the liability of the estate for the debts of his father and grandfather.

It is settled law that even the ancestral property of the father may be sold, either by himself or by a Civil Court having jurisdiction, in satisfaction of the debts of the father, not contracted for immoral purposes, and that such sale will bind sons *in esse* at the time of the sale. *Girdharee Lall* v. *Kanto Lall* (L. Rep. 1 I. A. 321; 14 Beng. L. Rep. 187; 22 W. Rep., Civ. Rul. 56) followed. NARRAYANACHARYA *v.* NARSO KRISHNA. *Westropp*, C.J., and *Melvill*, J...**I. L. Rep. 1 Bom. 262, 1876.**

See the cases under **Hindu Law—Alienation of Ancestral Estate.**

See **Hindu Law—Undivided Family. 3. 4. 7. 8.**

See **Limitation. 38a.**

See **Sale in Execution of Decree. 10. 15.**

HINDU LAW—LIABILITY OF INFANT FOR DEBTS INCURRED IN ANCESTRAL TRADE, CARRIED ON FOR HIS BENEFIT.

See **Hindu Law—Ancestral Trade.**

JOYKISTO COWAR *v.* NITTYANUND NUNDY...**I. L. Rep. 3 Cal. 783.**

Digitized by Google

HINDU LAW—LIABILITY OF SON FOR THE DEBTS OF HIS FATHER.

See **Hindu Law—Alienation of Ancestral Property. 1. 2. 3. 4. 5.**

See **Hindu Law—Undivided Family. 3. 4. 7. 8.**

See **Hindu Law—Liability of Ancestral Estate in the hands of the Heirs for the Debts of the Ancestors.**

NARAYAN *v.* NARSO...**I. L. Rep. 1 Bom. 262.**

See **Sale in Execution of Decree. 10. 15.**

See **Onus Probandi. 8.**

ADURMONY *v.* CHOWHDRY SIB NARAIN...**I. L. Rep. 3 Cal. 1.**

HINDU LAW—LIABILITY OF UNDIVIDED HINDU FOR DEBTS OF HIS DECEASED BROTHER.

See **Hindu Law—Undivided Family. 9.**

NARSINBHAT *v.* CHENAPA...**I. L. Rep. 2 Bom. 479.**

HINDU LAW — MAINTENANCE OF SON.

1.—*Adult Son.*] As a general rule, perhaps, a Hindu is not bound to support a grown-up son: but where there is practically no family property to be divided, an adult Hindu legitimate son, though suffering from no disability, is entitled to maintenance from his father, who is in the enjoyment of an impartible pension granted by Government in lieu of a resumed *Saranjam*. *Hematsing* v. *Ganpatsing* (12 Bom. H. C. Rep. 94) followed: *Pinhey*, J., doubting the correctness of the decision. RAMCHANDRA S. VAGH *v.* SAKHARAM G. VAGH. *Melvill* and *Pinhey*, JJ...**I. L. Rep. 2 Bom. 346, 1877.**

2.—*Partition.*] "There is ground for supposing that an adult Hindu, separated in estate from his father (and uncles), can, if he fall into destitution, enforce a claim for maintenance either against any one or more of them personally, or against the residue of the family estate left in their hands after he has received his share on partition." *Westropp*, C.J., in SAVITRIBAI *v.* LAXMIBAI ..**I. L. Rep. 2 Bom. 573-590, 1878.**

HINDU LAW—MAINTENANCE OF ILLEGITIMATE SON.

See **Hindu Law—Inheritance—Illegitimate Son. 4. 5.**

RAHI *v.* GOVIND.....**I. L. Rep. 1 Bom. 97.**

LAVING *v.* BHARTHI...**I. L. Rep. 2 Bom. 140.**

1.—*Sudras—Adultery.*] The illegitimate son of a Sudra, his mother having been a married woman at the time of her forming an adulterous intercourse with his father, is entitled to maintenance out of his father's estate, but not to inherit. VIRAMUTHI UDAYAN *v.* SINGARAVELU. *Kindersley* and *Busteed*, JJ...**I. L. Rep. 1 Mad. 306, 1877.**

2.—*Kshatriya.*] An adult illegitimate son of a Kshatriya by a woman not a *dasi* of his father, is not, by the Hindu law prevalling in Bengal, entitled to maintenance from his father. NILMONEY SINGH DEO *v.* BANNESHUR. *Jackson* and *Mitter*, JJ.....**I. L. Rep. 4 Cal. 91, 1878.**

3.—*Mitakshara Law—Power of Father to alienate Ancestral Immoveable Property*] The father of the appellant, being the owner of an ancestral estate consisting of five villages, and having at the time no legitimate son, but having an illegitimate son, the respondent, granted to the latter one of the said five villages by way of maintenance. *Held* that the illegitimate son of a person belonging to one of the twice-born classes has a right to maintenance, and that in assigning maintenance to the respondent, his father was acting in the performance of a legal obligation, and such assignment was therefore good.

Whether, under the Mitakshara law, a father who has no child born to him is or is not competent to alienate the whole or part of the ancestral estate; whether the rights of unborn children are so preserved by the Mitakshara as to render such an alienation unlawful,—their Lordships did not consider it necessary to determine, as the grant in this case would not fall within the prohibition, supposing that a father having no legitimate son is by the Mitakshara law incompetent to alienate ancestral estate to a stranger. RAJAH PARICHAT *v.* ZALIM SINGH...**L. Rep. 4 I. A. 159, 1877; I. L. Rep. 3 Cal. 214.**

4.—*Parties to Suit.*] The right of an illegitimate son of a Hindu to maintenance out

Digitized by Google

HINDU LAW—MAINTENANCE OF ILLEGITIMATE SON—*contd.*

of his deceased father's estate, cannot be decided in a suit which concerns only a portion of that estate, and to which all persons in possession of the rest of the father's property are not parties. NARRAYAN BHARTY *v.* LAVING BHARTY. *Westropp*, C.J., and *Melvill*, J ... **I. L. Rep. 2 Bom. 140, 1877.**

HINDU LAW — MAINTENANCE OF WIDOW.

—— Amount of.

See **Hindu Law — Maintenance of Widow. 5. 16. 18.**

—— Daughter-in-law.

See **Hindu Law — Maintenance of Widow. 8.**

—— Gift by husband of all his Estate—Liability of Donee.

See **Hindu Law — Maintenance of Widow. 17.**

—— Grant in lieu of—Resumption.

See **Limitation. 8.**

PETAMBER *v.* NILMONY...**I. L. Rep. 3 Cal. 790.**

—— Grant of money in lieu of—Land purchased with, can be disposed of by Widow by Will.

See **Hindu Law—Alienation by Widow. 4.**

NELLAIKUMARU *v.* MARAKATHAMMAL.....**I. L. Rep. 1 Mad. 166.**

—— Limitation to Suit for.

See **Hindu Law — Maintenance of Widow. 4. 5. 6. 7.**

See **Limitation. 32. 33.**

—— Multiplicity of Suits for.

See the cases under **Multiplicity of Suits.**

—— Purchaser without Notice of Claim for.

See **Hindu Law — Maintenance of Widow. 1. 13.**

—— Separate.

See **Hindu Law — Maintenance of Widow. 2. 3. 7.**

—— Separate Residence no bar to.

See **Hindu Law — Maintenance of Widow. 7.**

HINDU LAW — MAINTENANCE OF WIDOW—*contd.*

—— Varying Decree for.

See **Hindu Law — Maintenance of Widow. 10.**

And *see* the cases under **Multiplicity of Suits.**

1. —— *Maintenance of Widow — Charge on the Inheritance* — Bonâ fide *Purchaser.*] The plaintiff, a Hindu widow, sued in 1862 *B.*, who had succeeded to the estate of her deceased husband, for maintenance, and obtained a personal decree against him for the amount sued for, but did not claim, or obtain, a declaration that her maintenance was a charge upon her husband's estates or any part thereof. *B.* paid the maintenance till 1868, when the principal portion of the ancestral *raj*, which had been the plaintiff's deceased husband's property, was sold in execution of a decree against *B.*, and purchased by *M.* without notice of the plaintiff's claim to maintenance. It did not appear whether the whole of *B.*'s property was exhausted. No payments of maintenance having been made to the plaintiff since 1868, she instituted a suit for maintenance against *B.* and *M.*, and obtained a decree against both. *M.* appealed:—

Held, that the plaintiff's claim to maintenance did not constitute a charge upon the estate of her deceased husband so as to bind it in the hands of a *bonâ fide* purchaser for value and without notice of her claim.

The holder of a lien on specific property is in a different position from a person possessed of a right which is held to constitute a charge on the general estate of a deceased person. In the former case an innocent purchase must be proved before the prior charge can be defeated; in the latter, the purchaser must be affected with notice.

Held, also, that if the debts which led to the sale of the property in question were not entirely the debts of *B.*, but were partly ancestral, then the plaintiff's right to maintenance would be subject to the payment of those debts, *i.e.*, her claim to maintenance would be on the residue after paying such debts, and would be regulated by the amount thereof, and the other claims to maintenance then valid.

Quære, whether the plaintiff by obtaining a definite personal decree against *B.* did not modify the nature of her right, so as to place herself in an inferior position as regards the lien over the estate which she originally had.

Digitized by Google

HINDU LAW—MAINTENANCE OF WIDOW—*contd.*

Held, also, that there being nothing to show that the whole of *B.*'s estate had been sold, and as the plaintiff's first claim was on *B.*, it lay on her to show that his estate had been exhausted, before she could come on the property in the hands of the defendant *M.*, and therefore on all these grounds the plaintiff's suit as against *M.* was not good. ADHIRANEE NARIN COOMARY *v.* SHOKA MALEE PAT MAHADAI. *Jackson* and *Mitter*, JJ.....**I. L. Rep. 1 Cal. 365, 1873.**

2. —— *Separate Maintenance—Arrears.*] The husband of the plaintiff (a Hindu widow) having died in 1867, the plaintiff immediately went to reside with her parents. No demand of maintenance was made by her on her husband's family till 1876, when she sued her deceased husband's coparceners for nine years' arrears of money, alleged to have accrued due each year, for her maintenance:—

Held, that the plaintiff having taken up her residence permanently with her own family, and never even asked for anything on account of maintenance for many years, so as to create an impression that she had abandoned any claim she might have, and her family being in comfortable circumstances, while the defendants were people of straitened means, it would be a proper exercise of the discretion of the Court to reject the claims to a money annuity. The widow of a coparcener is not, in Bombay, entitled to her husband's share as in Bengal, to use at her discretion during her life. All she can strictly demand, is a suitable subsistence when necessary, and whatever is required to make such a demand effectual. In the present case there seemed to be no necessity, and the defendants were petty traders on whom the burden of a fixed payment might bear oppressively. If the plaintiff chose to reside with her husband's family, they must support her in such comfort as their means would allow; but in the absence of special circumstances necessitating her withdrawal and separate residence, she could not claim cash payments from the defendants to enable her to add to her luxuries while living apart. RANGO VINAYAK *v* YAMUNABAI. *West* and *Pinhey*, JJ. **I. L. Rep. 3 Bom. 44, 1878.**

Dissented from in KASTURBAI *v.* SHIVAJIRAM DEVKURUN...**I. L. Rep. 3 Bom. 372,** *infra*, **3.**

3. —— *Separate Maintenance of Widow voluntarily residing apart from her Husband's Family*—Onus Probandi.] A Hindu widow does not forfeit her right to maintenance out of the family property chargeable therewith by reason of non-residence with the family of her husband, except such non-residence be for unchaste or immoral purposes. Where there is family property available for maintenance, it lies on the parties resisting the claim to separate maintenance to show that the circumstances are such as to disentitle the widow thereto; *ex. gr.* that she resides separately from her husband's family for unchaste or immoral purposes, or that the family property is so small as not reasonably to admit of an allotment to her of a separate maintenance.

The case of a wife is different from that of a widow. The burden lies upon the wife to show such special circumstances as entitled her to a separate maintenance. *Rango Vinayak* v. *Yamunabai* (I. L. Rep. 3 Bom. 44) dissented from. KASTURBAI *v.* SHIVAJIRAM DEVKURUN. *Westropp*, C J., and *Melvill*, J...**I. L. Rep. 3 Bom. 272, 1879.**

on reference under § 575 of Act X. of 1877 upholding the opinion of *Melvill*, J., in opposition to that of *Pinhey*, J.

4.—— *Limitation Act IX. of* 1871, *Sched. II., Art.* 128—*Demand and Refusal—Arrears.*] A Hindu widow has a legal right, irrespective of demand and refusal, to recover arrears of maintenance to the extent allowed by the law of limitation for the time being.

In suits coming within the operation of Act IX. of 1871 she may recover arrears for any period, unless it appear that there has been a demand and refusal, in which case she can recover arrears for 12 years only from the date of such demand and refusal. JIVI *v.* RAMJI. *Melvill* and *Kemball*, JJ...**I. L. Rep. 3 Bom. 207, 1879.**

5. —— *Amount of Maintenance.*] In determining the amount of maintenance to be awarded to a Hindu widow, besides the value of the husband's estate, the position and status of the deceased husband and of the widow must be considered.

The fact that the deceased husband had given instructions for a will—which, however, was never executed—bequeathing a certain sum to his wife, may be taken into consideration, not as

Digitized by Google

HINDU LAW — MAINTENANCE OF WIDOW—*contd.*

conclusive on the amount to be awarded, but as affording some guide to the proper amount, if not a measure of it.

A Court is not justified in reducing, as a kind of punishment for vexatious defence to a suit, the amount of maintenance which it would otherwise have awarded. SREEMUTTY NITTOKISSOREE DOSSEE *v.* JOGENDRO NAUTH MULLICK...**L. Rep. 5 I. A. 55, 1878.**

6.—— *Limitation—Act XIV. of* 1859, § 1, *Cl.* 13—*Act IX. of* 1871, *Sched. II., Art.* 128.] In a suit instituted on the 17th September 1873 by a Hindu widow against her deceased husband's brother for maintenance, it appeared that the plaintiff's husband died in 1845, and that the plaintiff had neither received, nor made any claim for, maintenance from that date till 1871.

Held, that under Cl. 13, § 1 of Act XIV. of 1859—which provides that the period of limitation to suits for the recovery of maintenance, where the right to receive such maintenance is charged on the inheritance of any estate, shall be 12 years from the death of the person on whose estate the maintenance is alleged to be a charge, or from the date of the last payment to the plaintiff by the party in possession of the estate on account of such maintenance—the plaintiff's right to bring a suit for maintenance was barred in 1868; and—the principle of the decision of the Privy Council in *Gunga Gobind Mundul* v. *The Collector of the 24 Pergannahs* (11 Moo. I. A. 345; S. C. 7 W. Rep., P. C. 12) applying equally to a suit for maintenance as to a suit for the recovery of land—the plaintiff's remedy being barred, her right was barred also, prior to the passing of Act IX. of 1871, and was not revived by the repeal of Act XIV. of 1859 by the Act of 1871. KRISHNA MOHUN BOSE *v.* OKHILMONI DOSSEE. *Markby* and *Prinsep*, JJ...**I. L. Rep. 3 Cal. 331, 1877.**

See MOHESH LAL *v.* BASANT KUMAREE... **I. L. Rep. 6 Cal. 340, Vol. 2, Col. 813.**

As to this last point, *see* **Limitation. 15. 16. 17.**

7.—— *Right to Maintenance accrues from time to time—Widow's Residence in Ancestral House unnecessary.*] By common law the right of a Hindu widow to maintenance is one accruing from time to time, according to the wants and exigencies of the person entitled.

HINDU LAW — MAINTENANCE OF WIDOW—*contd.*

Separation by the widow from the ancestral house will not generally disentitle her to maintenance suitable to her rank and condition.

A Hindu by his will expressed a hope that his wives and sons would all live amicably together, and bequeathed the whole of his property to his eldest son, directing him to provide for his (the testator's) widows and the other members and dependents of the family; and declared that he made these provisions to prevent dissensions in the family, and to enable them to live in peace and harmony after his decease. In a suit brought more than 16 years after the testator's death by one of his widows against the eldest son to recover maintenance, it was contended for the defendant that the suit was barred by limitation; that it was a condition precedent to the plaintiff's right to maintenance under the will that she should reside with the defendant; and that there had been no demand and refusal of the maintenance:—*Held*, 1st, that the testator created no charge on any specific part of the estate, but imposed an obligation on the defendant to make allowances for the support of the widows of a kind analogous to the maintenance to which Hindu widows are entitled supposing probably that by his will he might have interfered with that law. It did not, therefore, create a right which was a specific "charge" on the inheritance of any estate within the meaning of Cl. 13, § 1 of Act XIV. of 1859, and the suit was not barred by limitation.

2ndly, that there was no condition in the will that the plaintiff should reside with the defendant so as to be entitled to maintenance; and that the plaintiff was therefore in this respect in the ordinary position of a Hindu widow, in which case separation from the ancestral house would not generally disentitle her to maintenance suitable to her rank and condition.

3rdly, that though there was no evidence of a specific demand for the maintenance, yet under the circumstances there was a withholding of the maintenance by the defendant under circumstances which amounted to a refusal of it, giving rise to a cause of action. NARAYANRAO RAMCHANDRA PANT *v.* RAMABAI...**L. Rep. 6 I. A. 114, 1879; I. L. Rep. 3 Bom. 415; 6 Cal. Rep. 162.**

S. C. under **Limitation. 32.**

8. —— *Father-in-law—Ancestral Property.*] *Held* by *Stuart*, C.J., *Turner* and *Spankie*, JJ.,

Digitized by Google

HINDU LAW — MAINTENANCE OF WIDOW—*contd.*

that a father-in-law in possession neither of ancestral nor immoveable property, having no fund with the disposal of which his son, if alive, could interfere, and who has inherited nothing from his son, and whose rights in any property have not been enlarged by his son's death, is not under any legal obligation to maintain his son's widow.

By *Pearson*, J.—A Hindu widow is not legally entitled to be maintained by her husband's relations after his death *merely* in consequence of such relationship, and irrespectively and independently of the existence in their hands of ancestral funds or properties.

By *Oldfield*, J.—When the deceased member of a family has left property, they who take it to the exclusion of his widow will be legally bound to maintain her out of the property. In a joint family where there is ancestral property, such a legal obligation will lie on the father-in-law to maintain his son's widow; but where the property is entirely the self-acquired property of the father, the son in his father's lifetime cannot be said to have had such an interest in the property as will impose at his death an obligation on his father to maintain his widow.

Where, therefore, in a suit by a Hindu widow against her father-in-law for maintenance, it appeared that he had sold the ancestral moiety of the house in which the parties formerly lived, in satisfaction of certain debts contracted by him, and not shown to have been contracted for immoral purposes, and that he had no other ancestral property in his hands, nor any property derived from his deceased son :—

Held by *Turner* and *Pearson*, JJ., the general rule is that a father-in-law who is not in possession of ancestral property is not legally bound to maintain his daughter-in-law, and that the alienation by the defendant of the ancestral property in payment of debts—an alienation which the son himself could not have resisted if alive—did not impose on the defendant the personal liability of maintaining the plaintiff. GANGA BAI *v.* SITA RAM.....**I. L. Rep. 1 All. 170, 1876.**

[As to this case *West*, J., said in LAKSHMAN RAMCHANDRA JOSHI *v.* SATYABHAMABAI...**I. L. Rep. 2 Bom. 494, at p. 519.**

" The ancestral house had been sold for debts, and the claim was one, as the Court says, ' which the son himself, if alive, could not have resisted.' This being so, it was not necessary, I think, to place the decision on what seems to me the more than doubtful ground, that a daughter-in-law cannot claim maintenance when the father-in-law has sold the ancestral property."]

HINDU LAW — MAINTENANCE OF WIDOW—*contd.*

9. —— *Ancestral Trade—Mitakshara Law—Debts incurred by Manager of Joint Family Trade—Insolvency.*] The plaintiff sued as widow of *M.*, a deceased member of a joint Hindu family subject to the Mitakshara law, and consisting of *M.* and his father *L.*, and his (*M.*'s) uncle *H.*, for a declaration that she was entitled to maintenance, out of the rents and profits of a certain house in Calcutta.

The house in question had been acquired by *L.*, partly out of funds received by him from the estate of his father *C.*, and partly out of the profits of a business for the sale of shawls, &c., which he carried on with money, portions of which were given to him by his father, and portions received by him from his estate. *M.* died after the acquisition of the house, leaving the plaintiff and *L.* and *H.* surviving him. The plaintiff lived with and was maintained by *H.* until 1875, when *H.* having failed in the said business, which he had up till that time carried on after the death of *L.* in 1866, filed his petition in the Insolvent Court, and the whole of his estate and effects became vested in the Official Assignee, who sold the house in question to *S.* The plaintiff then instituted this suit against the Official Assignee and *S.*:—

Held, the plaintiff admitting in her plaint that the property out of which she claimed maintenance was acquired by her father in-law, partly by money supplied to him by his father, and partly out of the profits of the business for the sale of shawls, &c., which he carried on with moneys, portions of which were given to him by his father, and portions received by him from his estate; the business established and carried on with money so derived must be treated as a joint family business, which *H.*, the insolvent, was carrying on at the time of his insolvency, and in respect of debts incurred in which he was adjudicated insolvent. The law is correctly laid down in *Ramlal Thakursidas* v. *Lakhmichund* (1 Bom. H. C. Rep., Appx. 51-71), that persons carrying on a family business, in the profits of which all the members of the family would participate, must have authority to pledge the joint family property and credit for the ordinary purposes of the business.

Digitized by Google

HINDU LAW — MAINTENANCE OF WIDOW—*contd.*

Debts, therefore, honestly incurred in carrying on such business,—and it was not alleged that any of the debts incurred by *H.* were incurred improperly, or otherwise than in the due course of business,—must override the rights of all members of the joint family in property acquired with funds derived from the joint business. Those who claim to participate in the benefits, must also be subject to the liabilities of the joint business. The debts in respect of which *H.* filed his petition in insolvency being joint business debts, and as such, debts for which business creditors could have attached the property, the whole interest in the property vested in the Official Assignee, by whose sale thereof to *S.*, *S.* acquired an absolute estate therein, and the plaintiff, under the circumstances of the case, had no right against *S.* or the joint creditors to maintenance or residence, out of or in the house in question, nor any claim which could be enforced against any part of the joint estate, until after payment of the joint trade debts. JOHURRA BIBEE *v.* SREEGOPAL MISSER *Pontifex*, J.....**I. L. Rep. 1 Cal. 470, 1879.**

10. —— *Decree for Maintenance—Suit for Reduction of Maintenance.*—A Hindu widow obtained a decree awarding her maintenance at a certain fixed rate, and charging the assets of a firm with the payment of such maintenance. There was no provision in the decree that such rate was subject to any modification which future circumstances might render necessary. The assets of the firm having become diminished, the proprietor of the firm brought a suit to obtain a reduction of the rate of maintenance:—

Held, that the diminution of the income of the estate on which the defendant's income was charged, since her allowance was fixed, was a sufficient cause for the present action, and that the defendant's allowance was liable to be reduced in proportion to the existing income. RUKA BAI *v.* GAUDA BAI. *Stuart*, C.J., and *Pearson*, J.....**I. L. Rep. 1 All. 594, 1878.**

See SIDLINGAPA *v.* SIDAVA...**I. L. Rep. 2 Bom. 624-630.**

Under **Multiplicity of Suits.**

11. —— *Separate Maintenance.*] The case of a wife is different from that of a widow. The burden lies on the wife to show such special circumstances as entitle her to a separate maintenance. *Per Westropp*, C.J. KASTURBAI *v.* SHIVAJIRAM DEVKURN.....**I. L. Rep. 3 Bom. 372-382.**

12. —— *Incontinence — Loss of Caste.*] Since Act XXI. of 1850 mere loss of caste does not occasion a forfeiture of rights of property. The Hindu law books of special force in Bombay Presidency, *viz.*, the Mayukha and the Mitakshara, support the position that even an incontinent widow is entitled to a bare maintenance. Where a widow had such a bare or starving maintenance allotted to her by a decree, made in a suit brought against her husband's relatives:—

Held, that her incontinence and consequent loss of caste subsequent to the decree, did not disentitle her to a continuance of the maintenance decreed. HONAMA *v.* TIMANBHAT. *Westropp*, C.J., and *N. Harridas*, J...**I. L. Rep. 1 Bom. 559, 1877.**

S. C. under **Hindu Law—Disqualification to Inherit. 7.**

See BHAVANI *v.* MAHTAB KUAR...**I. L. Rep. 2 All. 171.**

Under **Hindu Law—Disqualification to Inherit. 4.**

And *see* NEHALO *v.* KISHEN LALL...**I. L. Rep. 2 All. 150.**

Under **Hindu Law—Inheritance—Widows. 1.**

13. —— *Charge on the Estate in the hands of Purchasers—Notice.*] In a suit by a Hindu widow against her husband's brother, who was the sole surviving member of her husband's family, and against *bonâ fide* purchasers for value from him (the defendant), with notice of her claim, of certain immoveable ancestral property of the family:—

Held, that the circumstance that such purchasers had notice of her claim was not conclusive of her rights as against the immoveable property in their hands.

Putting her claim at the highest, it could not be regarded as superior to that among Hindus of a son against the ancestral estate; and a sale by a father for the payment of the debts of his own father, or grandfather, not contracted for immoral purposes, is good against his son; and even if the father have sold ancestral property for the discharge of his own debts, and the application of the bulk of the proceeds in payment of those debts has been satisfactorily ac-

Digitized by Google

HINDU LAW — MAINTENANCE OF WIDOW—*contd.*

counted for, the fact that a small part is unaccounted for, will not invalidate the sale. The same rule was applicable in this case, and therefore, if the property were sold in order to pay the debts (not of an immoral nature) of the plaintiff's husband, or his father or grandfather, or debts incurred for the benefit of the joint family, or to satisfy a former decree obtained by the plaintiff against the defendant for past maintenance, such sale would be valid against the plaintiff, whether or not the purchasers had notice of her claim.

Per West, J.—In Bengal the widow of a deceased coparcener, as regards her deceased husband's united coparceners, has a completed ownership of her husband's share in the undivided family estate, subject to restrictions on waste and subject to its proportion of the common burdens at the moment of her husband's death. If she chooses, she may have her share ascertained and separated. But this is placed by the Dayabhaga on the ground that there is no right of survivorship to intercept the widow's right of succession under Yajnavalkya's text, which the Bengal lawyers apply to a united as well as to a divided family. As against sons she has no proprietorship, but if they divide, an equal share must be given to her. Her right is in some degree analogous to a wife's equity to a settlement in English law. The right of survivorship, on the other hand, is fully recognized by the Mitakshara as excluding the widow when there are undivided coparceners to take the estate. If the coparceners of the deceased were his sons, they take in preference to all others. If they make a division of the estate, they must allot to their mother an equal share, and the same to any sonless widow of their father; but this does not invest the widows here, any more than in Bengal, with a proprietorship in the estate before partition. The sons must, from the moment of their father's death, be regarded as sub-owners, yet with a liability to provide for the widow's maintenance, and with a competence on the widow's part to have the estate made answerable.

If a mother, foregoing her claim to a separate provision out of the paternal property, resides with her sons or step-sons, and is maintained by them, she must submit to their dealing with the estate. A fraudulent alienation for the purpose of defeating her claims will not be supported; but the particular assignee for value

HINDU LAW—MAINTENANCE OF WIDOW—*contd.*

acquires a complete title — not impaired, like that of the assignee in insolvency, by the then obvious incapacity of the insolvent's son to support, out of the estate, those whose maintenance is a charge on it. The charge must be regarded as an equitable one of a special kind, enforceable in all cases in which the mother or step-mother living apart is not maintained by the sons; but not in other cases, except under circumstances which affect the good faith of the transaction by which it is sought to get rid of the burden. In the case of the widow of an ordinary coparcener as against the surviving members of the joint family, *her* claim being strictly to maintenance, and maintenance only, without any defined share in the estate even on partition, and the kind of maintenance even that she can claim being dependent on the perhaps fluctuating circumstances of the joint family, though she may at her will get her claim recognized as chargeable on the estate in the hands of the coparceners, reduced to certainty and secured as a specific charge on the estate, yet, if she refrains from that course in the hopes of sharing the improving circumstances of the family, or through carelessness, she leaves to the coparceners an unlimited estate to deal with at their discretion; though alienation or wasting of the property for the very purpose of depriving her of maintenance would be pronounced invalid or subject to revision.

If there is an ample estate out of which to provide for the widow, so that she may still get her claim fixed and secured, or if, knowing of the proposed sale, she does not take any step to secure her own interest, no imputation of bad faith, or of abetting it, can be made against the purchaser of a portion of the joint property.

If the widow, on the other hand, is not accepting support from the coparceners, in satisfaction of her claim; if she lives apart, and the estate is small and insufficient, it is the vendee's duty before purchasing to inquire into the reason for the sale, and not by a clandestine transaction to prevent the widow from asserting her right against the intending vendor.

It is in this connexion that the doctrine of notice becomes of importance.

The knowledge of collateral rights frequently qualifies those acquired by a purchaser. The right of a Hindu widow to maintenance is a right maintainable against the holders of the

Digitized by Google

HINDU LAW — MAINTENANCE OF WIDOW—*contd.*

ancestral estate, in virtue of their holding, no less through the operation of the law than if it had been created by agreement; and so when the sale prevents its being otherwise satisfied, it accompanies the property, as a burden annexed to it, into the hands of a vendee with notice that it exists. Equity, between the vendee and vendor, will make the property retained by the latter primarily liable; but such property there must be to make the sale and purchase free from hazard, where the vendee has knowledge, or the means of knowledge, of a widow's claim that cannot be satisfied without recourse to what he proposes to buy.

The debts of the deceased owner take precedence over the maintenance of the widow, and the estate is properly applied, in the first instance, by the sons in payment of such debts.

By a sale of the property the heirs cannot get rid of the personal liability to provide for the widow.

Whether the widow's claim for maintenance against the estate of her deceased husband in the hands of a purchaser or mortgagor is inforceable or not, does not depend on whether the rest of the estate in the hands of the heir has been exhausted or not. What was honestly purchased, is free from her claim for ever; what was purchased in furtherance of a fraud on her, or with the knowledge of a right which would thus be prejudiced, is liable to her claim from the first. The relations of the parties are determined once for all at the moment of sale. There is no authority for the doctrine which makes the claims of widows not entitled to a share of property in case of partition, a real charge on the inheritance, and ranks the claims of widows who are so entitled as a mere moral obligation. In all cases it is a claim to maintenance merely, not interfering, so long as it has not been reduced to certainty by a legal transaction, with the right of the actually participant members to deal with the property at their discretion, provided their dealing is honest and for the common benefit.

The reduction of the number of surviving coparceners to a single person makes no difference in the widow's legal position. The rights and obligations of the original coparceners fall at last to their sole survivor. The widows must be maintained by him out of the property, but he may still deal with the estate at his discretion

HINDU LAW — MAINTENANCE OF WIDOW—*contd.*

in the absence of actual fraud, or of a decree which has converted some widow's claim into an actual right *in re*. The purchaser from him takes a perfectly good title, and one which, if good at the time, cannot be impaired by subsequent changes in the vendor's family. LAKSHMAN RAMCHANDRA JOSHI *v.* SATYABHAMABAI. *Westropp*, C.J., and *West*, J ..... **I. L. Rep. 2 Bom. 494, 1877.**

S. C. under **Multiplicity of Suits. 1.**

14. —— *Nephew's Widow.*] It is well settled Hindu law in the Bombay Presidency that, a widow whose husband was, at his death, undivided in estate from his father, or the widow of one undivided, at his death, in estate from his brothers, or nephews, or other relative, would, in the first case, if there be sufficient ancestral estate in the hands of the surviving father, or in the second case, if there be sufficient ancestral estate in the hands of the surviving brothers, nephews, or other relative, be entitled to a reasonable maintenance out of such estate.

But in the Presidency and Island of Bombay, a Hindu widow voluntarily living apart from her husband's relatives, is not entitled to a money allowance as maintenance from them if they were separated in estate from her husband at the time of his death, nor is she entitled to such maintenance from them, whether or not they were separated from him at the time of his death, if they have not any ancestral estate, or estate belonging to or inherited from him, in their hands.

In the language of Manu and other Hindu jurists there is an important distinction when, without reference to the existence of family property, they especially treat of the maintenance and support of *the wife, or of parents, or an infant son*, and when they speak of the maintenance and support of the *females of the family at large*. In the former case, their tone is mandatory, and purports to impose a personal legal obligation of a permanent and continuous character enforceable by the sovereign or the State, &c.; in the latter case their tone is preceptive merely.

There is no Hindu authority for saying that after aHindu widow has received and spent her full share given to her as maintenance, she is entitled again to charge the family estate, or maintain a suit against her husband's relatives personally for another share or further mainte-

Digitized by Google

HINDU LAW—MAINTENANCE OF WIDOW—*contd.*

nance. *Bai Lakshmi* v. *Lakhmidas Gopaldas* (1 Bom. H. C. Rep. 13) disapproved.

Semble, the *stridhan* of a Hindu widow should be taken into account in determining whether and to what extent she should have maintenance assigned to her.

S., a Hindu widow, voluntarily residing apart from her husband's family, sued his paternal uncle, the nearest surviving male relative of her husband, for a money allowance as maintenance. *Held*, that the suit was unsustainable, for either of the two following reason, *viz.*—1st, that the defendant was separated in estate from her husband and his father at the time of the death of the former. 2nd, that at the time of the institution of the suit there was not in the defendant's possession any ancestral estate, or estate of the plaintiff's husband or his father.

Chandrabhagabai v. *Kashinath* (2 Bom. H. C. Rep. 323) and *Timmappa* v. *Parmeshriamappa* (5 Bom. H. C. Rep., A. C. J. 130) disapproved. SAVITRIBAI *v.* LAXMIBAI...**I. L. Rep. 2 Bom. 573, 1878, F. B.**

15.—— *Small Cause Court—Jurisdiction.*] In a suit by a widow against her husband's brother for a pecuniary allowance as maintenance and for the expenses of a pilgrimage to Benares :—

Held, following *Sidlingapa* v. *Sidava* (I. L. Rep. 2 Bom. 624) that the suit, though for a sum under Rs. 500, was not cognizable by a Mofussil Court of Small Causes, there being no allegation that the maintenance was secured by bond or other special contract.

Held also, following *Savitribai* v. *Laxmibai* (I. L. Rep. 2 Bom. 573), that the defendant was not liable, as he was not in possession of any ancestral property, or property which had belonged to the plaintiff's husband. APAJI CHINTAMAN *v.* GANGABAI. *Westropp*, C.J., *Kemball* and *West*, JJ.).....**I. L. Rep. 2 Bom. 632, 1878.**

16.——*Amount of Maintenance.*] A Hindu widow is not, at the utmost, entitled to a larger portion of the annual produce of the family property than the annual proceeds of the share to which her husband would have been entitled on partition if he were living. MADHAVRAV K. TILAK *v.* GANGABAI. *Westropp*, C.J., and *Kemball*, J.....**I. L. Rep. 2 Bom. 639, 1878.**

HINDU LAW—MAINTENANCE OF WIDOW—*contd.*

17.——*Gift by Husband during his Lifetime of all his Estate—Liability of Donee to maintain the Donor's Widow.*] A wife is, under the Hindu law, in a subordinate sense, a co-owner with her husband; he cannot alienate his property or dispose of it by will in such a wholesale manner as to deprive her of maintenance.

Where, therefore, a husband in 1850 made a gift of his entire estate, ancestral as well as self-acquired, without making any provision for the maintenance of his widow :—*Held*, in a suit brought by her in 1877 against the donee, that the latter must be deemed to have taken and to hold the estate subject to her maintenance. JAMNA *v.* MACHUL SAHU. *Pearson* and *Spankie*, JJ.....**I. L. Rep. 2 All. 315, 1879.**

18. —— *Widowed Mother — Amount of Maintenance.*] In a suit by a Hindu widow for maintenance :—

Held, that the fact that she was not a childless widow, but had had a son who died a minor subsequently to his father, was not a ground for reducing the allowance she would have been reasonably entitled to had she been a childless widow.

Maintenance should be allotted to her relatively to the amount of the profits on what would have been her husband's share had he lived. NARHAR SINGH *v.* DIRGNATH KUAR. *Stuart*, C.J., and *Straight*, J...**I. L. Rep. 2 All. 407, 1879.**

HINDU LAW—MAINTENANCE OF WIFE—*Small Cause Court—Jurisdiction.*] In the absence of any special bond or other contract for the payment of maintenance, a suit for maintenance is not cognizable in a Court of Small Causes in the Mofussil. The liability of the husband to maintain his wife is an obligation arising out of the *status* of marriage among Hindus expressly imposed by their law, and not out of contract.

Ordinarily the right and liability to maintenance do not rest on contract, but are created by the Hindu law in respect of the jural relations of the Hindu family. In numerous instances maintenance is recoverable in which there is no connexion with contract. SIDLINGAPA *v.* SIDAVA. *Westropp*, C.J., *Kemball* and *West*, JJ.....**I. L. Rep. 2 Bom. 624, 1878.**

S. C. under **Multiplicity of Suits. 2.**

Digitized by Google

HINDU LAW — MAINTENANCE OF WIFE—*contd.*

2. —— *Separate Maintenance.*] Although, by Hindu law, a husband is bound to maintain his wife, she is not entitled to a separate maintenance from him, unless she establishes in proof, that by reason of his misconduct, or by his refusal to maintain her in his own place of residence, or other justfying cause, she is compelled to live apart from him. SIDLINGAPA *v.* SIDAVA. *Westropp*, C. J., and *Kemball*, J.....**I. L. Rep. 2 Bom. 634, 1878**

3. —— *Separate Maintenance.*] The case of a wife is different from that of a widow. The burden lies on the wife to show such special circumstances as entitle her to a separate maintenance. *Per Westropp*, C.J., in TASTURBAI *v.* SHIVAJIRAM DEVKARAN....**I. L. Rep. 3 Bom. 372, 382.**

HINDU LAW—MAJORITY—Age of—for Hindus Domiciled and Resident in Calcutta.

See **Age of Majority.**

MATHOORMOHUN ROY *v.* SOORENDRO NARAIN DEB...**I. L. Rep. 1 Cal. 108.**

HINDU LAW—MANAGER OF UNDIVIDED FAMILY — Power of — to pledge Joint Family Property for purposes of Joint Ancestral Trade—Insolvency —Title of Official Assignee.

See **Hindu Law—Maintenance of Widow. 9.**

JOHURRA BIBEE *v.* SREEGOPAL MISSER...**I. L. Rep. 1 Cal. 470.**

See **Hindu Law—Ancestral Trade.**

JOYKISTO COWAR *v.* NITTYANUND NUNDY...**I. L. Rep. 3 Cal. 738.**

—— *Act IX. of* 1878, § 20.] The relation of the managing member of a Hindu family to his coparceners does not necessarily imply an authority on the part of the manager to keep alive, as against his coparceners, a liability which would otherwise become barred. The words of § 20 of the Limitation Act (IX. of 1871) must be construed strictly; and the manager of a Hindu family, as such, is not an agent "generally or specially authorized" by his coparceners for the purpose mentioned in that section. KUMARASAMI NADAN *v.* PALA NAGAPPA CHETTI. *Morgan*, C. J., and *Kindersley*, J.....**I. L. Rep. 1 Mad. 385, 1878.**

HINDU LAW—MARRIAGE — *Persons of Different Subdivisions of Sudra Caste.*] *Per Mitter*, J.—"In ordinary cases, where it is established that parties have lived together as husband and wife for a long length of time, it is consonant with natural justice to presume a valid marriage between them; and I am not aware of any peculiar provision in the Hindu Law which is inconsistent with such a presumption as this. But in this case there is no room for it, for the parties are of different castes" (fisherman and weaver castes respectively), "and a valid marriage between them is impossible, unless sanctioned by any peculiar social custom governing them."

Per Markby, J.—*Quære*, whether there is any legal restriction upon such a marriage. NARAIN DHARA *v.* RAKHAL GAIN...**I. L. Rep. 1 Cal. 1, 1875.**

S. C. under **Hindu Law — Inheritance—Illegitimate Son. 2.**

HINDU LAW—MARRIAGE IN ASURA FORM — *Nagar Vissa Vania Caste — Inheritance.*] Whether property coming to a widow by inheritance from her husband is or is not, in the strict sense of the term, *stridhan*, it seems to be quite settled, that property derived by a childless widow by gift or inheritance from her husband, or so much of it as remains, passes on her death to his heirs, and not to her own blood relations, except in the case of a widow who had been married to her deceased husband in some other than one of the four approved or more reputable forms of marriage.

The essential characteristic of the *Asura* form of marriage appears to be the giving of money or presents by the bridegroom or his family to the father or parental kinsmen of the bride; in the four approved or more reputable forms, no such presents are made.

There is nothing to show that the *Asura* form of marriage is obligatory on the mercantile and servile classes, or that the more approved forms are not permissible to them as well as to the two higher classes. The Nagar Vissa Vanias are reputed to belong to the Vaisya or third of the four original great sub-divisions of the Hindu race, and the form of marriage in use among them corresponds with one or other of the approved forms, and not to the incidents of that called *Asura*, and the giving of *pala* does not constitute a purchasing of the bride.

Therefore property inherited from her deceased husband by a childless widow of the Nagar Vissa

Digitized by Google

HINDU LAW—MARRIAGE IN ASURA FORM—*contd.*

Vanias, on her death intestate devolves on the relations in blood on the mother's side of her husband, in preference to the heirs and next of kin of the widow. JAIKISONDAS GOPALDAS *v.* HARKISONDAS HULLOCHANDAS. *Green*, J...**I. L. Rep. 2 Bom. 9, 1876.**

HINDU LAW—MINORITY—Age of—of Hindu Domiciled and Resident in Calcutta.

See **Age of Majority.**

MOTHOORMOHUN *v.* SOORENDRO NARAIN...**I. L. Rep. 1 Cal. 108.**

HINDU LAW — PARTITION — Adopted Son—Share of.

See **Hindu Law—Partition. 11.**

—— Of Ancestral Property does not alter its Ancestral Character.

See **Onus Probandi. 8.**

ADURMONI *v.* CHOWDHRY SIB NARAIN...**I. L. Rep. 3 Cal. 1.**

—— Burden of Proof of.

See **Onus Probandi. 4.**

VEDAVALLI *v.* NARAYAN.....**I. L. Rep. 2 Mad. 19.**

—— Co-Widows—Right of one of two Co-Widows to enforce.

See **Hindu Law—Inheritance—Widows. 2.**

SRI GAJAPATHI NILAMANI *v.* SRI GAJAPATHI RADHAMANI...**L. Rep. 4 I. A. 212; I. L. Rep. 1 Mad. 290.**

—— Decree for—Effect of.

See infra. **12. 14.**

—— Decree for—Execution of.

See **Decree for Partition.**

SHEIKH KHOORSHED *v.* NUBBEE FATIMA...**I. L. Rep. 3 Cal. 551.**

See **Execution of Decree. 11.**

RAJCOOMAREE *v.* GOPAL CHUNDER. **I. L. Rep. 3 Cal. 512.**

—— Evidence of.

See **Compromise. 2.**

PITAM SINGH *v.* UJAGAR SINGH... **I. L. Rep. 1 All. 651.**

And *see infra.* **5. 6.**

HINDU LAW—PARTITION—*contd.*

—— Impartible Zemindary—Transfer by Deed of Family Arrangement to Younger Brothers—Succession thereto of Widow as to Separate Estate.

See **Hindu Law—Separate Property.**

PERIASAMI *v.* PERIASAMI **L. Rep. 5 I. A. 61; S. C. I. L. Rep. 1 Mad. 312.**

—— Limitation to Suit for.

See infra. **9.**

See **Prescription. 1.**

SITARAM *v.* KHANDERAV.....**I. L. Rep. 1 Bom. 286.**

—— Mother's Right to Share on Partition between sons on Father's Death.

See infra. **4.**

See **Parties to Suit. 3.**

TORIT BHOOSUN *v.* TARA PROSONNO...**I. L. Rep. 4 Cal. 756.**

See **Hindu Law—Maintenance of Widow. 13.**

LAKSHMAN *v.* SATYABHAMABAI... **I. L. Rep. 2 Bom. 494.**

—— Of Pension in lieu of *Saranjam.*

See **Saranjam.**

RAMCHANDRA *v.* SAKHARAM...**I. L. Rep. 2 Bom. 346.**

—— Of *Saranjam.*

See **Saranjam.**

RAMCHANDRA *v.* SAKHARAM...**I. L. Rep. 2 Bom. 346.**

—— Son's Right to enforce.

See infra. **2. 13.**

—— Widow's Right to enforce.

See infra. **3.**

1. —— *Ancestral Estate—Unequal Distribution of—Outstandings.*] A Hindu, governed by the Mitakshara law, who has two sons undivided from himself, cannot, whether his act be regarded as a gift or as a partition, bequeath the whole, or almost the whole, of the moveable ancestral estate to one son, to the exclusion of the other. A plaintiff entitled on partition to one-half the property in his brother's hands, is bound to bring into hotchpot any ancestral property, or property acquired from ancestral funds, which may be in his own possession; but

Digitized by Google

HINDU LAW—PARTITION—*contd.*

he is not bound to account for money received by him during his father's lifetime from his father, while he was living in commensality with his father and brother: for, where the enjoyment of what is in common may have been unequal, that of some being greater than that of others, the shares on a division are still to be the same, the law taking no account of greater or less expenditure, unless the difference be such as to exclude all idea of proportion, the object entirely selfish, or the circumstances of a kind to impute fraud. The members of an undivided Hindu family, when making a partition, are entitled, as a rule, not to an account of past transactions, but to a division of the family property actually existing at the date of partition.

In a partition suit, the Court ought not to direct an immediate money payment by the defendant to the plaintiff of his share in the outstanding debts due to the estate, as if such outstanding debts had been recovered, and the money were in the hands of the defendant. And as a member of an undivided Hindu family is not bound to effect a partition by paying a certain sum of money to his coparceners, the Court, in a partition suit, ought not to award interest on money decreed to be paid by the defendant to the plaintiff. LAKSHMAN DADA NAIK *v.* RAMCHANDRA DADA NAIK. *Melvill* and *Kemball* JJ.....**I. L. Rep. 1 Bom. 561, 1877.**

Affirmed on appeal.....**L. R. 7 I. A. 181.**

2. —— *Son's Right to demand Partition.*] In an undivided Hindu family governed by the Mitakshara law, a son has a right to demand and enforce, in the lifetime and against the will of his father, the partition of immoveable ancestral family property. KALI PARSAD *v.* RAMCHARN. **I. L. Rep. 1 All. 159, 1876, F. B.**

3. —— *Right of Widow to enforce.*] The question whether a Hindu widow is entitled to partition is one for the discretion of the Court in each particular case. The Court would probably refuse partition by metes and bounds to a childless widow, who was entitled to a very small share. But where a widow had daughters and grandsons, and the share she was entitled to through her husband was considerable, she was held entitled to a decree for partition. SOUDAMONEY DOSSEE *v.* JOGESH CHUNDER DUTT. *Pontifex*, J...**I. L. Rep. 2 Cal. 262, 1877.**

S. C. under **Hindu Law—Will.**

HINDU LAW—PARTITION—*contd.*

4. —— *Dayabhaga — Mother's Share on Partition among Sons—Deceased Son.*] On a partition among her sons, a mother is entitled to a share as representative of a deceased son, as well as one in her own right.

According to the Dayabhaga, Chap. III., Sec. II., para. 31, "The equal participation of the mother with the brothers takes effect if no separate property has been given to the woman, but if it has been given she takes a half-share"; and the share which a mother takes as representing a deceased son is not separate property given to her, nor, being inherited property, is it, according to the Bengal school, *stridhan*. JUGMOHAN HALDAR *v.* SARODAMOYEE DOSSEE. *Kennedy*, J ..... **I. L. Rep. 3 Cal. 149, 1877.**

See **Parties to Suit. 3.**

TORIT B. BONNERJEE *v.* TARA PROSONNO...**I. L. Rep. 4 Cal. 756.**

5. —— *Evidence of.*] Where the question was whether three brothers had separated after their father's death, one brother and the widow of another alleging that the separation was confined to the third brother, and it was proved that there were admissions by the brothers of division, proceedings such as mutation of names in the revenue records, only consistent with the fact that such division had taken place, and separate bankers' accounts, and separate dealings with property, all pointing to a division of the deceased brother's estate from both his brothers:—

Held, that there was ample evidence of the separation of all three brothers after their father's death. PRAG DAS *v.* HARI KISHEN. *Pearson and Oldfield*, JJ...**I. L. Rep. 1 All. 503, 504, 1877.**

S. C. under **Hindu Law—Forfeiture of Widow's Estate.**

6. —— *Evidence of—Definement of Shares.*] The fact that there was a definement of shares followed by entries of separate interests in the revenue records in some estate only is an important piece of evidence towards proving separation of title and interests, but it will not necessarily amount to such separation; it must be shown that there was an unmistakable intention on the part of the shareholders to separate their interests, and that the intention was carried into effect. The best evidence is separate enjoyment of profits and dealings with the

Digitized by Google

HINDU LAW—PARTITION—*contd.*

property, and if it be found that through a long course of years there is nothing to show that a definement of shares has been acted on, and that the parties continued to enjoy the property on the same footing as before, it is but reasonable to suppose that though they may have taken some steps towards separation, the intention to separate was abandoned AMBIKA DAT *v.* SUKHMANI KUAR. *Turner* and *Oldfield*, JJ.....**I. L. Rep. 1 All. 437, 1877.**

7. —— Dewuttur — *Trust in favour of Idol —Evidence.*] In a suit for partition, the plaint stated that the common ancestor of the plaintiffs and the defendants and his five sons, had acquired certain properties; that on the death of the ancestor the five sons separated among themselves, taking certain land, amounting to 16 *bighas* each, for their own private expenses: that the remaining lands they held in *ijmalee* among themselves; that one of them became the manager, who made the collection of the rents, and from the profits thereof paid the expenses of the *Rash*, Dole, &c., festivals and the worship of the idol, all of which were alleged to be patrimonial; and that the balance of the money was divided among themselves.

The substance of the defence was that the whole of the property under claim was the property of the idol.

The lower Court found that some of the property was *dewuttur* and impartible, and made a decree for partition of the rest.

Held on appeal, that the statements in the plaint did not amount to an admission that the property had been given to the idol, and so had become impartible; and that, partition being an incident of property, if the property were the property of the several members of the family, and had not been transferred from the family, and actually dedicated to the idol, but was subject only to a trust in favour of the idol, the decree for partition was right. But the lower Court having erroneously declared that certain admissions made by the parties, to persons making inquiries on behalf of Government with a view to the resumption of their property in suit, were not evidence, the case was remanded with directions to consider the same, and that if it should be found that the property remained the property of the several members of the family, subject to a trust in favour of the idol, and that only the profits of the lands were dedicated to the worship of the idol, and the

HINDU LAW—PARTITION—*contd.*

surplus proceeds distributed among the members, then that the decree for partition should stand. RAM COOMAR PAUL *v.* JOGENDER NATH PAUL. *Markby* and *Prinsep*, JJ...**I. L. Rep. 4 Cal. 56; 2 Cal. Rep. 310, 1878.**

8. —— *Undivided Family—No Partition for several Generations.*] In a joint Hindu family in which partitions of family property have taken place, the mere fact that there has been no division of the estate during six or seven generations does not deprive the members of the right to demand a partition. THAKUR DURRIAO SINGH *v.* THAKUR DAVI SINGH...**L. Rep. 1 I. A. 1; 13 Beng. L. R. 165, 1873.**

9. —— *Metes and Bounds—Partition by Agreement without actual Division*—Seer *Land —Limitation Act XIV. of* 1859, § 1, *Cl.* 13.] A partition may be effected by agreement, although no actual division of the property may have been made by metes and bounds. If it clearly appears that the parties intended to make a final partition of their joint property, that intention will be given effect to.

Where the bulk of the estate of a Hindu family is held and managed by a single member of the family, and the other members receive and enjoy part of the lands as *seer*, the possession of the bulk of the estate by the manager is not adverse, so as to bar, under the Limitation Act XIV. of 1859, § 1, Cl. 13, a suit by the others for partition; unless there are circumstances to show that they accepted the *seer* lands in lieu of the shares they would have been entitled to on partition. *Appovier* v. *Rama Subba Aiyan* (11 Moo. I. A. 75) approved. RUNJEET SINGH *v.* KOOER GUJRAJ SINGH...**L. Rep. 1 I. A. 9, 1873.**

10. —— *Intention to divide — Metes and Bounds.*] There may be division of a joint and separate Hindu family, and of the joint property, without a regular partition by metes and bounds. The question in every particular case must be one of intention, whether the intention of the parties to be inferred from the instruments they have executed, and the acts they have done, was to effect such a division. Circumstances under which an intention to effect a separation has been inferred. *Appovier* v. *Rama Subba Aiyan* (11 Moo. I. A. 75) followed. BABOO DOORGA PERSAUD *v.* MUSSUMAT KUNDUN KOOWAR...**L. Rep. 1 I. A. 55; 13 Beng. L. R. 235; 21 W. R. 214, 1873.**

Digitized by Google

HINDU LAW—PARTITION—*contd.*

11. —— *Mitakshara Law — Share of any Adopted Son of a Natural Son on Partition, in a Mitakshara Family—Intention as to Joint or Several Ownership.*] The plaintiffs claimed a one-third share of the common family property. The common ancestor of the family, one *S. D.*, had three sons, *B.*, *L.*, and *D.* The plaintiff was one of the sons of *B.*, but was adopted by *D.*, who died in the lifetime of his (*D.*'s) father, *S. D.* The defendants were the other sons of *B.*, and the son of *L.* The family was governed by Mitakshara law.

Held, that on partition between the members of a Mitakshara family an adopted son and the adopted son of a natural son stand exactly in the same position, and that each takes only the share proper for an adopted son,—*i.e.*, half of the share which he would have taken had he been a natural son. The fact that the plaintiff as a member of a Mitakshara family became, upon adoption, a joint owner of the family property, did not prevent the operation of this general rule, and the plaintiff was therefore entitled only to a one-sixth share.

No right vests in any member of a joint Hindu family to a specific share until some act has been done which has the effect of turning the joint ownership into several ownership. This may be done by a mere signification of intention, and when a signification of intention has once taken place which has this effect, the share of each member becomes at the same moment several and defined. It is the signification of intention, producing concurrently these two results, which enables a member of a joint Hindu family to dispose of his share by sale whilst the family still remains joint. RAGHUBANUND DOSS *v.* SADHU CHURN DOSS. *Markby* and *Prinsep*, JJ...**I. L. Rep. 4 Cal. 425; 3 Cal. Rep. 535, 1878.**

12. —— *What amounts to — Suit for Share —Decree.*] Although a suit by a member of a joint Hindu family against his co-sharers for a separate share of the joint estate be not in terms a suit for partition, yet, if it appear that the intention of the plaintiff was to obtain the share to which he would be entitled on a partition, and the decree passed in the suit assigns him that share, such decree does, in fact, effect a partition at all events, of rights, which, under the doctrine laid down in *Appovier* v. *Rama Subba Aiyan* (11 Moo I. A. 75), is effectual to destroy the joint estate. JOY NARAIN GIRI *v.* GIRISH CHUNDER MYTI...**I. L. Rep. 4 Cal. 434, 1878 P. C.; S. C. L. Rep. 5 I. A. 228.**

HINDU LAW—PARTITION—*contd.*

13. —— *Ancestral Property—Right of Sons to compel Partition.*] "It seems now to be settled law in the Courts of the three Presidencies that a son can compel his father to make a partition of ancestral immoveable property." *Per Cur.* SURAJ BUNSI KOER *v.* SHEO PERSHAD SINGH.....**L. Rep. 6 I. A. 88; 4 Cal. Rep. 226, 100, 1879.**

14. —— *What amounts to Partition—Decree—Inheritance.*] In a suit for partition, the first of the issues in the cause was settled in August 1871, as follows:—"Whether the property sued for constituted a zemindary, and if so, whether it is partible or impartible, and whether it is liable to all the incidents of private property." This issue was tried separately, and determined by the Judge on the 24th of August. The Judge found that on the evidence it was quite clear that the estate was in its nature partible, and that the plaintiff was entitled to a moiety of the property, subject to all charges as might thereafter be found binding. No formal order or decree was drawn up on the judgment embodying these findings, but in the subsequent proceedings, the Court treated the question whether the coparceners were to be declared separate, or whether the property was partible, as decided by the judgment of the 24th August 1871, against which judgment no appeal was preferred:—

Held, that the judgment of the 24th August 1871, must be taken to be equivalent to a declaratory decree determining that there was to be a partition of the estate into moieties, and making the coparceners separate in estate from that date, if they had not previously become so; and that, though the actual division of the property was not complete, the case fell within the principle of *Appovier* v. *Rama Subba Aiyan* (11 Moo. I. A. 75), and on the plaintiff's death his interest passed to his own representatives in the course of succession as separate estate, and not to his coparcener by survivorship. CHIDAMBARAM CHETTIAR *v.* GOURI NACHIAR...**L. Rep. 6 I. A. 177, 1870; S. C. I. L. Rep. 2 Mad. 83; 5 Cal. Rep. 6.**

HINDU LAW—PRIMOGENITURE.

See **Hindu Law—Inheritance—Primogeniture.**

Digitized by Google

HINDU LAW — RELINQUISHMENT OF SHARE BY SON—*Inheritance—Private Arrangement—Widow.*] The effect of a Hindu son relinquishing for a sum of money his share in the property of his father, natural or adoptive, and agreeing not to claim it during or after his father's lifetime, is to place him in the position of a separated son. The relinquishment does not amount to disherison. If, therefore, the father on such relinquishment makes an alienation of his estate, it will take effect, but otherwise his separated son will inherit in preference to his widow.

A son by birth or adoption can, for adequate reasons, be disinherited, but the course of devolution prescribed by the law cannot be altered by a private agreement. On the disherison of the son the son's son becomes his grandfather's lawful heir. BALKRISHNA TRIMBAK TENDULKAR *v.* SAVITRIBAI. *West* and *Pinhey*, JJ.....**I. L. Rep. 3 Bom. 54, 1878.**

HINDU LAW—REMARRIAGE OF WIDOW—*Maraver Caste.*] In their customs and observances, persons of the Maraver caste are mainly governed by the Hindu law. But among them widows may remarry, and in this respect their customs differ from those of the Hindu law as understood to be binding on the higher castes in the present day. Their law of inheritance of property, and of the right of the widow of a man who has no male issue to a life interest in it, is the Hindu law, and it must be assumed that they are in such matters guided by the principles of that law, however much it may be relaxed in reference to their social usages. The principle on which a widow takes the life interest of her deceased husband when there is no male heir, is that she is a surviving portion of her husband; and when the rule as to remarriage is relaxed, and a second marriage allowed, the law will not allow the widow who has remarried, and who must be regarded as no longer surviving her husband, to lay claim to property left by him:—*Held*, therefore, that a widow of the Maraver caste who had remarried, had no claim to the property of her first husband. MURUGAVI *v.* VIRAMAKALI. *Morgan*, C.J., and *Innes*, J...**I. L. Rep. 1 Mad. 226, 1877.**

HINDU LAW—RIGHT OF FATHER TO CUSTODY OF INFANT DAUGHTER—Loss of Caste does not affect.

See **Loss of Caste.**

KANAHI RAM *v.* VIDDYA RAM... **I. L. Rep. 1 All. 549.**

HINDU LAW—SALE OF LAND—*Sale in Execution — Assignment — Possession.*] On a sale in execution of a decree, the property in the thing sold passes to the purchaser, and there is nothing in the Hindu or English law which debars a third person from taking an assignment of such property from the auction purchaser, albeit it has not been reduced into possession by him. GOVIND RAGHUNATH *v.* GOVIND JAGOJI. *Kemball* and *Pinhey*, JJ...**I. L. Rep. 1 Bom. 500, 1876.**

2. —— *Delivery of Possession — Registration.*] The weight of authority preponderates greatly in favour of the necessity of a transfer of possession as the necessary complement of a contract, in order to effect an absolute change of ownership by sale. The transfer of possession may be replaced by registration, or by a decree giving notice to all of the change; but in the absence of some such public indication, the only right acquired by a vendee, as by a mortgagee or donee, is one of an equitable character enforceable only against the vendor and those taking under him with notice,—not against purchasers or sub-purchasers in possession without notice, whose legal title, fully acquired, cannot be cancelled by the Court, on the ground of dishonest or unconscionable means having been used in acquiring it.

Under Act VIII. of 1871, §§ 48 and 50, an unregistered deed of sale accompanied by possession would not take effect against a registered deed of sale without possession, where the sale and delivery of possession under the unregistered deed are, though prior to the registration, yet subsequent to the execution of the registered instrument. But where in such a case both deeds are registered, they must be weighed againt each other according to the Hindu law, *i.e.*, the deed accompanied by possession will prevail against the prior deed unaccompanied by possession.

Therefore where *B. A.* sold a house to the plaintiff on 2nd July 1868, and executed a deed of sale to him, and on the same day executed another deed of sale of the same house to the defendant and put him into possession; and the defendant registered his deed on the 7th July 1868, while the plaintiff did not register his deed till the 26th July 1872;—*It was held*, in a suit brought by the plaintiff to recover possession of the house, that the defendant's possession completed his title, and that he could not

Digitized by Google

HINDU LAW—SALE OF LAND—*contd.*

be ousted by the plaintiff. LALUBHAI SURCHAND v. BAI AMRIT. *West* and *Pinhey*, JJ...**I. L. Rep. 2 Bom. 299, 1877.**

HINDU LAW—SALE OF UNDIVIDED SHARE OF MEMBER OF UNDIVIDED FAMILY—Effect of.

See **Hindu Law—Gift. 2.**

BALLABH DAS v. SUNDER DAS... **I. L. Rep. 1 All. 429.**

HINDU LAW — SELF-ACQUIRED PROPERTY.

See **Oudh Proclamation of 1858, para. 8. 1.**

HARPURSHAD v. SHEO DYAL ..**L. Rep. 3 I. A. 259.**

—— Burden of Proof.

See **Onus Probandi. 4.**

VEDAVALLI v. NARAYANA.....**I. L. Rep. 2 Mad. 19.**

—— Grant of Village in *Inam* jointly to Members of Undivided Family.

See **Hindu Law — Undivided Family. 1.**

RADHABAI v. NANARAV.....**I. L. Rep. 3 Bom. 151.**

—— Gift of—to one Son to exclusion of others —valid.

See **Hindu Law—Gift. 1.**

SITAL v. MAHADO...**I. L. Rep. 1 All. 394.**

—— *Mitakshara Law— Education out of Joint Funds*—In a suit to set aside a will it was contended that under Mitakshara law the property acquired by the testator by successful trading, and by the exercise of his industry and intelligence, became joint in contemplation of law if the nucleus with which he commenced trading, and round which his fortune gathered, had been acquired by him from his father, or if he had been educated out of the funds of the family :—

Held on the evidence, that such nucleus had not been derived from the testator's father, and that he had not been educated out of any joint funds, but out of the separate estate of the father. It therefore became unncessary to consider whether the somewhat startling proposition of law—that if a member of a joint Hindu family receives any education whatever from the joint funds, he becomes for ever after incapable of acquiring by

HINDU LAW — SELF-ACQUIRED PROPERTY—*contd.*

his own skill and industry any separate property —is or is not maintainable. Very strong and clear authorities would be necessary to support such a proposition.

No texts had been cited which went to the full extent of the proposition contended for; and it might hereafter become necessary for their Lordships to consider whether or not the more limited and guarded expression of the law on this subject of the Courts of Bengal (as laid down in *Dhunookdharee Lall* v. *Gunput Lall*, 10 W. Rep. 122) was not more correct than what appeared to be the doctrine of the Courts at Madras. PAULIEM VALLOO CHETTY v. PAULIEM SOORYA CHETTY...**L. Rep. 4 I. A. 109, 1877; I. L. Rep. 1 Mad. 252.**

S. C. under **Practice—Privy Council. 2.**

HINDU LAW — SEPARATE PROPERTY.

See **Compromise. 2.**

PITAM SINGH v. UJAGAR SINGH... **I. L. Rep. 1 All. 651.**

1. —— *Impartible Zemindary — Succession of Widow thereto as Separate Estate—Renunciation —Transfer—Partition.*] The ancient and impartible zemindary of Padamattar, descendible by primogeniture according to the usage of such zemindaries, and originally portion of the Shivaganga estate, descended under the Mitakshara law as joint ancestral estate to *M.*, the eldest of three Hindu joint brothers, on the death of their uncle *G.*, who left a widow *P.* surviving him and pregnant. *G.* had up to the time of his death been recognized by Government as zemindar, and had been in possession of the Shivaganga zemindary. On his death the Shivaganga zemindary was claimed by *M.*, and was given over to him by Government when *G.*'s widow *P.* was delivered of a daughter. In anticipation of that event, an agreement was passed by *M.*, on the 20th of June 1829, to his second brother *G.*, as follows:—"My junior paternal uncle, zemindar of Shivaganga, having departed this life, leaving no male issue, I have become entitled to the zemindary : and you, as my next younger brother, are appointed as zemindar of the *palayapat* of the said Padamattar. But as Parvata, one of the royal wives of our abovementioned junior paternal uncle, is pregnant, we shall act as usual in the matter of the

Digitized by Google

HINDU LAW — SEPARATE PROPERTY—*contd.*

said palayapat in the event of her giving birth to a son. But should she be delivered of a daughter, I and my offspring shall have no interest in the palayapat, but you alone shall be the zemindar, and rule and enjoy the same, allowing at the same time, as per former arrangement, to the younger brother, the village that has been assigned to him."

This agreement took effect on the birth of *P.*'s daughter; and from that day to the commencement of the present suits, the Padamattar zemindary had gone in the line of *G.*'s descendants, *M.* obtaining possession of the Shivaganga zemindary. *G.* died in 1835, and was succeeded by his son *D.*, who died in 1861. In a suit brought in 1873 by *S.*, one of the sons of *M.*, to recover from the defendants in possession, all of whom claimed to be purchasers for value from *D.* under different titles, seven villages, all that remained of the Padamattar palayapat:—

Held, that the plain meaning of the above agreement was that *M.* renounced, for himself and each of his descendants, all interest in the palayapat, either as the head or as a junior member of the joint family, while he expressly reserved the right of the youngest brother. The effect, therefore, of the transaction was to make the Padamattar palayapat the property of the two instead of the three brothers with all its incidents of impartibility and peculiar course of descent, and to do so as effectually as if in the case of an ordinary partition between the brother, on the one hand, and the two younger brothers on the other, a particular property had fallen to the lot of the two; and that consequently, as between the descendants of *M.* and *D.*, the palayapat of Padamattar was the separate property of the latter, and on his death, his right, if he had any left undisposed of in the property, passed to his widow, notwithstanding the undivided *status* of the family; and that, therefore, the case was one to which the rule of succession affirmed by the *Shivaganga Case* (9 Moo. I. A. 539) applied, and the plaintiff had no title to sue in the lifetime of the widow. PERIASAMI *v.* PERIASAMI..... **L. Rep. 5 I. A. 61; 2 Cal. Rep. 81, 1878.**

S. C. **I. L. Rep. 1 Mad. 312**, *sub nom.* SHIVAGANGA TEWAR *v.* RAMASAMI CHETTI.

HINDU LAW—SOUDAYAKAM.

See **Hindu Law — Alienation by Widow. 2.**

MADHAVARAYA *v.* TIRTHA SAMI... **I. L. Rep. 1 Mad. 307.**

HINDU LAW—STRIDHAN — Alienation by Widow of Lands purchased with.

See **Hindu Law — Alienation by Widow. 3.**

VENKATA *v.* VENKATA.....**I. L. Rep. 1 Mad. 281.**

—— Daughter's Inheritance from her Father is not.

See **Hindu Law — Inheritance — Daughter. 4.**

CHOTAY LALL *v.* CHUNNOO LALL... **L. Rep. 6 I. A. 15; I. L. Rep. 4 Cal. 744.**

——Descent of — Gift to Married Woman by Husband's Father's Sister's Son.

See **Hindu Law — Inheritance — Stridhan.**

HURRYMOHUN SHAHA *v.* SHONATUN SHAHA.....**I. L. Rep. 1 Cal. 275.**

—— Immoveables Given by Husband not.

See **Hindu Law—Gift. 3.**

RUDR NARAIN SINGH *v.* RUP KUAR. **I. L. Rep. 1 All. 734.**

—— Property acquired under Sunnud from Government to Widow and her Heirs.

See **Act. I. of 1869, § 22, Cl. 11.**

BRIJ INDAR BAHADUR SINGH *v.* RANEE JANKI KOER...**L. Rep. 5 I. A. 1.**

1.——*Mitakshara Law—Inherited Property.*] Under the Bengal school of Law and the Bengal decisions on the Mitakshara, inherited property is not *stridhan* whatever controversies there may be under the other schools or in other treatises. *Per White*, J., in JUGMOHAN HALDAR *v.* SARODAMOYEE DOSSEE...**I. L. Rep. 3 Cal. 140, 150, 1877.**

2. —— *Immoveable Property inherited by Grandmother.*] To constitute *stridhan* devolving on a woman's heirs, it must be held unconditionally and subject to no restriction. Property inherited by a paternal grandmother from her grandson will not bear this test, since it is like property inherited by the mother from the

Digitized by Google

HINDU LAW—STRIDHAN—*contd.*

son, subject to the same restrictions as to its disposal as that inherited by the wife from her husband. Such property, therefore, does not rank as *stridhan*, and on her death devolve on her heirs, but devolves on her death on the heirs of her grandson. PHUKAR SINGH *v.* RANJIT SINGH. *Pearson* and *Oldfield*, JJ ..**I. L. Rep. 1 All. 661, 1878.**

3. ——*Immoveable Property given by Husband—Purchased with* Stridhan.] Immoveable property given to a married woman by her husband during his life, cannot be alienated by her at her pleasure, after his death, but moveable property so given by her husband becomes her *stridhan*, and over immoveable property purchased by her after her husband's death out of the proceeds and on the credit of her *stridhan*, and with money obtained by her by using her own personal credit and ability, and without the aid of her husband's estate, she has complete power of disposition and can dispose thereof by will, though had such property been purchased during her husband's lifetime she might not have had absolute power to dispose of it during her husband's lifetime. VENKATA RAMA RAU *v.* VENKATA SURIYA RAU. *Morgan*, C. J., and *Kindersley*, J...**I. L. Rep. 1 Mad. 281, 1877.**

S. C. under **Hindu Law—Alienation by Widow. 3.**

Hindu Law—Will. 9.

HINDU LAW—UNDIVIDED FAMILY

—Alienation by Member of—governed by Mitakshara Law, of his Share, by Voluntary Alienation.

See **Hindu Law—Alienation of Ancestral Property. 2. 3. 4. 7.**

MUSSUMAT PHOOLBAS KOONWAR *v.* LALLA JOGESHUR SAHOY. .. **L. Rep. 3 I. A. 7; I. L. Rep. 1 Cal. 226.**

GIRDHAREE LALL *v.* KANTOO LALL.. **L. Rep. 1 I. A. 321; 14 Beng. L. Rep. 187.**

SURAJ BUNSI KOER *v.* SHEO PERSHAD...**L Rep. 6 I. A. 88.**

CHAMAILI KUAR *v.* RAM PERSHAD. **I. L. Rep. 2 All. 267.**

See **Hindu Law—Gift. 2.**

BALLABH DAS *v.* SUNDER DAS... **I. L. Rep. 1 All. 429.**

HINDU LAW—UNDIVIDED FAMILY *—contd.*

—— Alienation by a Member of an—of his Share in the Ancestral Property—Liability of such Share to Sale in Execution of Decree against such Member.

See **Hindu Law—Alienation of Ancestral Property. 4.**

SURAJ BUNSI KOER *v.* SHEO PERSHAD SINGH...**L. Rep. 6 I. A. 88.**

—— Authority of Manager of.

See **Hindu Law—Ancestral Trade.**

JOYKISTO COWAR *v.* NITTYANUND NUNDY...**I. L. Rep. 3 Cal. 783.**

See **Hindu Law—Maintenance of Widow. 9.**

JOHURRA BIBEE *v.* SREEGOPAL MISSER...**I. L. Rep. 1 Cal. 470.**

See **Hindu Law—Manager.**

KUMARASAMI *v.* PALA NAGAPPA... **I. L. Rep. 1 Mad. 385.**

—— Certificate of Administration to Estate and Guardianship to Minor Children of Deceased Member of—cannot be granted where no Separate Estate.

See **Certificate of Administration of Minor's Estate.**

GURACHARYA *v.* SVAMIRAYACHARYA.....**I. L. Rep. 3 Bom. 431.**

—— Compromise Effected by Father when binding on Son.

See **Compromise. 2.**

PITAM SINGH *v.* UJAGAR SINGH... **I. L. Rep. 1 All. 651.**

—— Liability of Share of Deceased Member of—for his Debts under Decrees against his Widows as his Representatives.

See **Hindu Law—Alienation of Ancestral Property. 3.**

MUSST. PHOOLBAS KOONWAR *v.* LALLA JOGESHUR SAHOY...**L. Rep. 3 I. A. 7; I. L. Rep. 1 Cal. 226.**

Digitized by Google

HINDU LAW—UNDIVIDED FAMILY —*contd.*

—— Mortgage by Father during Son's Minority —Suit to enforce Mortgage—*Onus Probandi.*

See **Onus Probandi. 7.**

BHEEKNARAIN SINGH *v.* JANUK SINGH.....**I. L. Rep. 2 Cal. 438.**

—— Personal Decree against Father—Sale of Family Property in Execution of—Right of Son to recover Share.

See **Sale in Execution of Decree. 10. 15.**

VENKATASAMI NAIK *v.* KUPPAIYAN....**I. L. Rep. 1 Mad. 354.**

VENKATTARAMAYYA *v.* VENKATTASUBBRAMANIA...**Ibid. 353.**

—— Sale of Undivided Share of Member of—Effect of.

See **Hindu Law—Gift. 2.**

BALLABH DAS *v.* SUNDER DAS...**I. L. Rep. 1 All. 429.**

—— Sale of Undivided Share of Member of—in Execution of Decree against such Member.

See **Bom. Act V. of 1862.**

ARDASIR *v.* MUSE...**I. L. Rep. 1 Bom. 601.**

See **Civil Procedure Code, Act VIII. of 1859, § 269.**

KALAPA *v.* VENKATESH.....**I. L. Rep. 2 Bom. 676.**

See **Hindu Law — Alienation of Ancestral Property. 1 to 5.**

See **Hindu Law—Liability of Ancestral Property in the hands of the Heir for the Debts of the Ancestor.**

NARAYAN *v.* NARSO...**I. L. Rep. 1 Bom. 262.**

See **Hindu Law—Undivided Family. 3. 4. 7. 8.**

And *see* **Sale in Execution of Decree. 10. 15.**

VENKATARAMAYYAN *v.* VENKATASUBBRAMANIA...**I. L. Rep. 1 Mad. 358.**

VENKATASAMI *v.* KUPPAIYAN..... **Ibid. 354.**

HINDU LAW—UNDIVIDED FAMILY —*contd.*

—— Succession in—Brothers—Nephews.

See **Hindu Law — Inheritance — Nephews.**

BHIMUL DOSS *v.* CHOONEE LALL... **I. L. Rep. 2. Cal. 379.**

—— Succession in—of Brothers and Nephews Sons of Predeceased Brother.

See **Hindu Law — Inheritance—Brothers. 3.**

DEBI PARSHAD *v.* THAKUR DIAL... **I. L. Rep. 1 All. 105.**

—— Suit by one Member for a specific Share.

See **Parties to Suit. 4.**

NATHUNI MAHTON *v.* MANRAJ MAHTON...**I. L. Rep. 2 Cal. 149.**

—— Summary Settlement with, and Grant of Talookdari Sunnud to Member of.

See **Oudh Proclamation of 1858, para. 8.**

HURPURSHAD *v.* SHEO DYAL...**L. Rep. 3 I. A. 259.**

1. —— *Grant of Village in* Inam *to Members of Undivided Family—Survivorship—Joint Tenancy.*] The village of Alur was in 1830 granted in *inam* by the British Government, in the joint names of *N.* and *T.* for services rendered by their late father. The grant was made to *N.* and *T.* jointly, and without any limitation by words purporting that they were to take it in distinct shares. On the death of *T.* his widow claimed a moiety of the *inam*, alleging that *T.* had died separate from his brother *N.* The lower Courts found the alleged separation not proved. On appeal to the High Court, it was argued for the widow that the village was the self-acquired property of *N.* and *T.*, and that she was entitled to her husband's share on his death, irrespective of union or separation :—

Held that *T.* could not be held to have acquired half the village in such a sense that, as between him or his widow the plaintiff, it could be regarded as self-acquired property. The grant of the village would in English law have created a joint tenancy, and on the death of one joint tenant the other takes the whole of the joint property by right of survivorship. The result would be the same under Hindu law. The wot brothers held the village as coparceners, and

Digitized by Google

HINDU LAW—UNDIVIDED FAMILY *—contd.*

the rule of Hindu law is, that when property is held in coparcenary, the share of an undivided coparcener, who leaves no issue, goes to his undivided coparceners; and this is equally the case when the property is acquired in joint tenancy as when it is ancestral. RADHABAI *v.* NANARAV. *Melvill* and *Pinhey*, JJ.....**I. L. Rep. 3 Bom. 151, 1879.**

2. —— Seer *Land—Participation to Extent of Share.*] In a suit for his share of the joint estate by a member of an undivided Hindu family, who has been in a possession of *seer* land, where the defence of limitation is set up, it is not necessary that the plaintiff should prove that he participated in the profits of the family estate to the full extent of his share. If the members of the family lived in commensality, and the funds of the estate which they respectively held, independently of the *seer* land, were brought into the common fund, and they participated in this fund by reason of their living in commensality, it is not necessary that the plaintiff should prove the possession of a specific share of the joint fund.

Per Sir *Barnes Peacock* in LUCHMUN SINGH *v* SHUMSHERE SINGH...**L. Rep. 2 I. A. 58, 1874.**

3. —— *Mitakshara Law—Sale of Share in Execution—Rights of Purchaser.*] The respondent's father being indebted to the appellant, executed to him a mortgage bond to secure the amount due, on which the appellant, without making the other co-sharers parties to the suit, obtained a decree in the form of an ordinary decree for money, in execution of which, without taking any proceedings to enforce the decree against the property especially mortgaged, the appellant caused to be sold the right, title, and interest of the judgment debtor in the joint family estate, and became himself the purchaser thereof, and obtained delivery of possession of the whole estate as purchaser.

In a suit by the respondent to recover the same, on the ground that the said share could not be sold in execution without proof of legal necessity for the debt:—

Held, that the appellant had not acquired by the execution sale more than the right, title, and interest of the judgment debtor. If he had sought to go further, and to enforce the debt against the whole property, and the co-sharers therein who were not parties to the bond, he ought to have framed his suit accordingly, and have made those co-sharers parties to it. But assuming that a member of a Mitakshara joint family may not dispose of his share in the joint estate by voluntary conveyance without the consent of his coparceners, the right, title, and interest of one co-sharer in a joint ancestral estate may be attached and sold in execution to satisfy a decree obtained against him personally under the Mitakshara law, as well in Bengal as in Bombay and Madras, and the appellant as purchaser at an execution sale of such share, was entitled to ascertain the same by such partition as the judgment debtor might have compelled before the alienation of his share took place. DEENDAYAL LALL *v.* JUGDEEP NARAIN SING ..**L. Rep. 4 I. A. 247, 1877; I. L. Rep. 3 Cal. 198; 1 Cal. Rep. 49.**

4. —— *Mitakshara Law—Execution—Sale of Interest of one Member of Joint Family.*] The principle laid down in the case of *Deendayal Lall* v. *Jugdeep Narain Sing* (L. Rep. 4 I. A. 247; I. L. Rep 3 Cal. 198) that the right, title, and interest of a Hindu father in a joint family estate under the Mitakshara law can be attached and sold in execution of a decree obtained against him personally, is applicable to the right, title, and interest of any member of the joint family against whom a decree has been obtained. The right, title, and interest of such member can be attached and sold in execution of a decree against him personally. RAI NARAIN DASS *v.* NOWNIT LAL. *Garth*, C. J., and *Prinsep*, J.....**I. L. Rep. 4 Cal. 809, 1879.**

5. —— *Ancestral Immoveable Property—Rights of Father and Son.*] Sons who are members of an undivided Hindu family acquire by birth an interest in the paternal as well as the ancestral estate, of a proprietary and coparcenary nature, but while their interest is proprietary, it lacks the incident of dominion. The son's enjoyment of the property is subject to the dispositions lawfully made by the father as head and manager of the family, and, if dissatisfied, the son's remedy will lie in any right he may possess to partition the estate. Where, therefore, *A.*, the plaintiff, sued to eject his son from a portion of a house partly ancestral and partly self-acquired by the plaintiff, which the defendant had taken possession of on its being

Digitized by Google

vacated by a tenant, and which the plaintiff wished to dispose of in the way he thought most desirable for the interests of the family,—there having been no illegal disposition of the property by the plaintiff, and the defendant having occupied the portion of the house from which it was sought to eject him, because he objected to live with his mother-in law,—the plaintiff's claim was decreed. BALDEO DAS *v.* SHAM LAL. *Turner*, C. J. (Offg.), and *Oldfield*, J...**I. L. Rep. 1 All. 77, 1875.**

6. —— *Joint Estate — Presumption.*] In the case of an ordinary Hindu family who are living together, or who have their entire property in common, the presumption is, that all that any one member of the family is found possessed of, belongs to the common stock, and the onus of establishing the contrary is thrown on the member of the family who disputes it.

But this presumption does not arise where it appears that there has been a division of the family property, and where the members of the family live separately, and have no commensality between them. BANNOO *v.* KASHEE RAM... **I. L. Rep. 3 Cal. 315, 1877, P. C.**

7. —— *Mitakshara—Purchaser at Execution Sale of Joint Family Property—Usurious Rate of Interest—Form of Decree.*] In a suit by a Hindu subject to the Mitakshara law, against certain auction purchasers at a sale in execution of a decree against his father, to recover a portion of the ancestral estate by cancellation of the sale, it appeared that the property that was mortgaged by the bond on which the decree was obtained, was not put up for sale. The bond was a bond not only mortgaging property, but made the mortgagor personally liable; and the decree provided "that the claim be decreed; that the plaintiff recover the amount with costs and interest, and that the decree be executed against the property specified by the bond." The decree also allowed interest at the rate of about 50 per cent., the rate in the bond, to the decree-holders. It was contended on behalf of the plaintiff that, according to the true construction of the decision of the Privy Council in *Muddan Thakoor* v. *Kantoo Lall* (14 Beng. L. Rep. 187, S. C. L. Rep. 1 I. A. 321), when ancestral property is sold in execution of a decree against the father, though the purchaser was not bound to look to the character of the debt, he was bound to examine

the character of the decree to see if it were a proper one, and that the decree was an improper one on its face, as it appeared that the decree-holders were bound to proceed first against the mortgaged property:— .

Held that, according to the decision of the Privy Council in the above case, the purchaser is not bound to look beyond the decree to see that there was a right decree, but was only bound to look to the decree to see that in point of form it was a proper decree.

Held also, that the fact that it appeared on the face of the decree that the interest allowed on the bond was an usurious rate of interest, was not a circumstance which, within the principles laid down by the Privy Council, could be treated as showing that the decree was for a debt which the son was not bound to discharge.

Held also, that upon such a decree as that set forth above, a person may proceed either against the person or the property specified in the decree (though whether such a course should be allowed in any particular case is a matter for the discretion of the Court executing the decree); and that, under the law laid down by the Privy Council, the purchaser (the defendant) had a right to assume that the property which was sold was liable to sale under the decree, and that any questions which the judgment debtor might have raised or did raise upon the order by which the property was brought to sale, were disposed of at the time when the sale was ordered to take place. LACHMI DAI KOORI *v.* ASMAN SING. *Markby* and *Mitter*, JJ....**I. L. Rep. 2 Cal. 213, 1876.**

8. —— *Ancestral Estate—Execution—Sale of Coparcener's Interest.*] In a suit by a member of an undivided Hindu family to have his right declared to a portion of the joint estate, which had been sold by the Civil Court in execution of a decree against his coparcener alone:—

Held, that the plaintiff was entitled to a decree declaring that he was entitled to joint possession along with the execution purchaser as tenant in common. But that if a division *in specie* were desired, a suit should be brought for that purpose. BABAJI LAKSHMAN *v.* VASADEV VENAYEK. *West* and *N. Harridas*, JJ...**I. L. Rep. 1 Bom. 95, 1876.**

9. —— *Liability of Undivided Hindu for Debts of Deceased Brother.*] *P.*, an undivided

Digitized by Google

HINDU LAW—UNDIVIDED FAMILY —*contd.*

Hindu coparcener, died on the 7th August of 1874, leaving him surviving a son, *N.*, and a brother *C.* The son, *N.*, died on the 2nd of July 1875. In a suit brought by the plaintiff against *C.*, on a bond executed by *P.* as surety for one *R.* :—

Held, that the joint family property which had vested by survivorship in *C.* was not his hands liable for the separate debts of his brother *P.*, and that it not having been shown that any separate property belonging to *P.* or *N.* had come to *C.*'s hands, or that *P.* had executed the surety bond for the benefit of the undivided family, *C.* was not liable to the plaintiff. NARSINBHAT BAPUBHAT *v.* CHENAPA NINGAPA. *Westropp*, C.J., and *Melvill*, J...**I. L. Rep. 2 Bom. 479, 1877.**

10. —— *Purchase with Joint Funds—Execution.*] A purchase by a member of a Hindu joint family with the joint funds is a purchase on account of the joint family, and property so bought may be taken in execution for a joint family debt.

In execution proceedings the Court will look at the substance of the transaction, and will not be disposed to set aside an execution upon mere technical grounds when they find that it is substantially right. BISSESSUR LALL SAHOO *v.* MAHARAJAH LUCHMESSUR SINGH...**L. Rep. 6 I. A. 233, 1879.**

HINDU LAW—WIDOW'S RIGHT OF RESIDENCE IN FAMILY HOUSE—A Hindu widow, who resided with her husband and the members of his family in the family dwelling-house while he was alive, is entitled to reside therein after his death, and cannot be ousted by an auction purchaser of the right, title, and interest in the house of her husband's nephew. *Mangala Debi* v. *Dinnanath Bose* (4 Beng. L. Rep., O. C. J. 72; 12 W. Rep., O. J. 35) followed. GAURI *v.* CHANARAMANI. *Turner* and *Spankie*, JJ ..**I. L. Rep. 1 All. 262, 1876.**

HINDU LAW—WILL—Ancestral Property—Unequal Distribution.

See **Hindu Law—Will. 11.**

—— Attestation of.

See **Hindu Law—Will. 2.**

—— Bequest to Class

See **Hindu Law—Will. 4. 7.**

HINDU LAW—WILL—*contd.*

—— Bequest to Person Designated—Direction to Widow to Perform Adoption Ceremonies.

See **Hindu Law—Will. 6.**

—— Condition in Restraint of Partition.

See **Hindu Law—Will. 1.**

—— Executor, Estate of.

See **Hindu Law—Will. 10.**

—— Executor, Renunciation by.

See **Hindu Law—Will. 3.**

—— of Hindu Widow.

See **Hindu Law—Will. 5. 8. 9.**

—— Inconsistent Condition.

See **Hindu Law—Will. 13.**

—— Nuncupative.

See **Hindu Law—Will. 12.**

—— Probate.

See **Probate.**

—— Uncertainty—Void Bequest.

See **Hindu Law—Will. 3. 4.**

—— Revocation by Parol.

See **Act I. of 1869, § 22, Cl. 4.**

MAHARAJAH PERTAB NARAIN SINGH *v.* MAHARANEE SUBHAO KOOER .....**L. Rep. 4 I. A. 228; S. C. I. L. Rep. 3 Cal. 626.**

1. —— *Construction—Hindu Will — Clause restraining Partition or Enjoyment.*] A Hindu testator by his will, after appointing his son *G.* as his sole executor, directed that he should have the management of all his moveable and immoveable property, and the conduct of his business (that of a liquor merchant), and that his three other sons should remain joint with *G.*, who, out of the profits of the business, was to lay out, as long as the sons remained joint, Rs. 200 per month for household expenses, such sum to be divided among the sons in the event of their being unwilling to remain joint. The first paragraph of the will then continued—"After 20 years from my death my sons will be at liberty to divide and take the aforesaid business, but before the aforesaid 20 years (have elapsed) my sons will not be compent to divide the capital stock or profits of the aforesaid busi-

Digitized by Google

HINDU LAW—WILL—*contd.*

ness,"—"before the lapse of 20 years from my death neither *G.* nor any of my other sons shall acquire any right therein." In the 2nd paragraph of the will, the testator directed a sum he had accumulated from the profits of the business "to be thrown into the *jumma* of the aforesaid business, the two to be divided according to the rule for the aforesaid business, after the lapse of 20 years from my death. Before this time my sons shall not be competent to make a division." The 5th paragraph of the will was as follows:—"Whatever other immmoveable property, &c., I have beside the said business, I give to my sons in equal shares; as soon as they wish, they may divide and take it in equal shares. But after the lapse of 20 years from my death, my eldest son *G.* and his heirs, becoming rightful proprietors, will get a 5 annas share of the whole of my aforesaid business;" and the clause then proceeded to declare the shares to which the other sons of the testator should then be entitled.

Held, that upon a true construction of the will the words in the first paragraph "neither he nor any of my sons shall acquire any rights therein" meant rights of immediate enjoyment; and that the testator gave all his property in the aforesaid business to his sons in the shares specified in paragraph 5, but postponed their enjoyment of that property for twenty years, subject only to the monthly gift of Rs. 500. But, without deciding that a Hindu testator might not give the current profits or income of the property to the trustees, and direct them to apply that to the payment of debts throughout a specified period, as twenty years, it was not competent to him to give the *corpus* of the property to an adult person, and at the same time to forbid that person from enjoying the property in the way which the law allows. The prohibition, therefore, against receiving and enjoying the income for twenty years was a condition imposed on the property which was repugnant to the gift and was void in law, and the sons were, therefore, immediately entitled to the business, subject to the direction with regard to the application of the Rs. 200 a month for household expenses and were entitled to a partition. MOKOONDO LALL SHAW *v.* GONESH CHUNDER SHAW. *Phear*, J.....**I. L. Rep. 1 Cal. 104, 1875.**

2. —— *Attestation — Signature.*] A will by a Hindu is not invalid because it was not written by the testator himself and because his signature is not attested. RADHABAI *v.* GANESH TATYA GHOLAB. *Westropp*, C.J., and *Kemball*, J..... .....**I. L. Rep. 3 Bom. 7, 1878.**

3. —— *Probate—Renunciation by Executor—Proof of Execution in Court—Void Bequest—Uncertainty — Administration Accounts.*] A Hindu testator empowered his executor to lay out such portion of his estate as the executor might think fit for the erection of a bathing-ghaut and temples, and the daily worship therein, and directed that his "said executor should hold the rest and residue of his said property, and should invest the accumulation thereof to the best advantage," but made no disposition of such residue. The executor renounced, and no probate of the will, or letters of administration with the will annexed, was granted. In a suit by the testator's sole heiress for construction of the will, and for a declaration that she was entitled to the residue of the testator's estate, and for administration, the Court allowed the execution of the will to be proved in Court; declared the trust for the erection of the bathing-ghaut and temples void for uncertainty; that the residue of the testator's property was undisposed of, and the plaintiff as his sole heiress was entitled thereto after payment of his debts; and directed the usual administration accounts to be taken. SURBO MUNGOLA DABEE *v.* MOHENDRONATH NATH. *White*, J..... **I. L. Rep. 4 Cal. 508, 1879.**

4. —— *Gift to Unascertained Class—Void Bequest.*] A bequest by a Hindu to a class of persons some of whom are not in existence at the date of the testator's death, and could not, therefore, legally take, is wholly void; and the fact that some of the class are then living and capable of taking, will not enable the class to open out and let in any after-born members of the class. *Tagore* v. *Tagore* (9 Beng. L. Rep. 377) and *Soudamoney Dossee* v. *Jogesh Chunder Dutt* (I. L. Rep. 2 Cal. 262) followed. KHERODEMONEY DOSSEE *v.* DOORGAMONEY DOSSEE. *Garth*, C.J., and *Markby* J...**I. L. Rep. 4 Cal. 455, 1878.**

And *see* TREEPOORA SOONDERI DOSS. *v.* DEBENDRONATH TAGORE... **I. L. Rep. 2 Cal. 43, p. 53.**

5. —— *Construction—Alienation by a Hindu Widow.*] *H. R.*, a Hindu inhabitant of the province of Behar, by a document of a testamentary character after reciting the death of

Digitized by Google

HINDU LAW—WILL—*contd.*

his son, his younger brother with his wife, and his own wife, declared that "only *R. D.*, widow of *R. K.*, my deceased son above mentioned, who, too, excepting her two daughters born of her womb, *B. S.* and *B. D.*, has no other heirs, is my heir. Except *R. D.* aforesaid none other is, nor shall be, my heir and *malik*." "Furthermore, to the said *R. D.*, too, these very two daughters named above, together with their children who after their marriage may be given in blessing to them by God Almighty, are and shall be heir and *malik*."

B. S. predeceased the testator *H. R.* without issue.

B. D. died subsequently, leaving her husband and an infant son, the respondent.

After *H. R.*'s death, *D. K.* sold a portion of the ancestral lands to the appellant for Rs. 41,000, of which Rs. 14,000 were devoted to pay off a mortgage thereon.

In a suit by the respondent against the appellant and *D. K.* for a declaratory order preserving unmolested his future right, title and interest to the said lands, and for cancellation of the deed of sale:—

Held—In construing the will of a Hindu it is not improper to take into consideration what are known to be the ordinary notions and wishes of Hindus with respect to the devolution of property. It may be assumed that a Hindu generally desires that an estate, especially an ancestral estate, shall be retained in his family; and it may be assumed that a Hindu knows that, as a general rule, at all events, women do not take absolute estates of inheritance which they are enabled to alienate. Having reference to these considerations, together with the whole of the will,—all the expressions of which must be taken together, without any one being insisted on to the exclusion of others,—the intention of the testator must be taken to have been, that *D. R.* should not take an absolute estate which she should have power to dispose of absolutely, but that she should take an estate subject to her daughters succeeding her in that estate, whether succeeding as heirs of herself, or as heirs of the testator, being immaterial; and that *D. R.*, therefore, took a life interest immediately succeeding the testator, without that interest being shared by her daughters or by any other person, and not an estate of inheritance which she was able absolutely to alienate; and, therefore, that

HINDU LAW—WILL—*contd.*

D. R. could not convey to the defendant an estate beyond her own life, and that the plaintiff was entitled to a decree to the effect that after *D. R.*'s death the property belonged to him.

Held also, that *D. R.* was very much in the position of a Hindu widow and might have sold the estate absolutely if it could have been shown (and the burden of showing this lay on the purchaser) that to convey such an absolute estate was necessary to pay off the debts of the testator, and for the benefit of his estate generally; but that there was no such proof in the present case; still, the mortgage of Rs. 14,000 subsisting on the estate at the time of the sale, and having been paid by the purchaser, it was equitable, that when the plaintiff reclaimed the estate, credit should be given to the purchaser for the payment of the mortgage, which otherwise the plaintiff himself would have to meet. To the declaration of the plaintiff's title, therefore, was added: "and to be put in possession of the said property on the decease of *D. R.*, on payment to the said defendant of the sum of Rs. 14,000. MOULVIE MAHOMED SHUMSOOL HOODA *v.* SHAVUKRAM...**L. Rep. 2 I. A. 7; 22 W. R. 409, 1874.**

6.——*Adoption—Performance of Ceremonies—Gift to Person designated.*] *G.*, a Hindu, by his will declared that, "As I am desirous of adopting a son, I declare that I have adopted *K. B.*, third son of my eldest brother, *S. P.* My wives shall perform the ceremonies according to the Shastras and bring him up, and until that adopted son comes of age, those executors shall look after and superintend all the property moveable and imoveable in my own name or *benami*, left by me; also that adopted son. When he comes to maturity, the executors shall make over everything to him to his satisfaction." * * * "God forbid! but should this adopted son die, and my younger brother *N.* have more than one son, then my wives shall adopt a son of his. If at that time *N.* has not a son eligible to adoption, they shall adopt another son of *S.*, and the wives and executors shall perform all the aforementioned acts."

In a suit by one of the widows of *G.*, as heir of her husband, to set aside his will and recover half his property, it was contended that inasmuch as the ceremonies necessary to the completion of the adoption of *K. B.* were performed by one

Digitized by Google

wife only, the adoption was not complete, and that *K. B.* never became the son of *G.*:—

Held that according to the true construction of the will, there was a gift by the testator of his property to a designated person, *viz.*, *K. B.*, and that it would be an altogether erroneous reading of the will to suppose that the testator intended the taking of his property by *K. B.* to be dependent on whether the wives chose, or did not choose, to perform the ceremonies. Whether they performed the ceremonies or not, the gift to *K. B.* took effect; and during *K. B.*'s life no other adoption could take place. NIDHOOMONI DEBYA *v.* SAROD PERSHADA MOOKERJEE ..... **L. Rep. 3 I. A. 253.**

7. —— *Bequest to a Class—Remoteness—Applicabiltty of English Rules to Hindu Will—Right of Hindu Widow to Partition.*] A Hindu testator died in 1837, leaving four sons and two grandsons by a deceased son. By his will dated in 1837, after directing that his property should be divided into five shares, of which his four sons were to take one each, and his two grandsons the remaining one, the testator made the following devise:—

"On the death of any or either of my said four sons, or of the said *R. D.* and *M. D.* (his grandsons), leaving lawful male issue, such male issue shall succeed to the capital or principal of the share or respective shares of his or their deceased father or fathers, to be paid or transferred to them respectively on their attaining the full age of twenty-one years; but if any or either of my said four sons shall die without leaving any male issue, or if he or they shall die leaving such male issue, and the whole of such issue shall afterwards die under the age of twenty-one years and without male issue, in such case the share or shares of my said sons so dying shall go to and belong to the survivors of my said sons and my two said grandsons for life, and their respective male issue absolutely after their deaths in the same manner and proportion as is hereinbefore described respectively." *U.*, one of the sons, died in 1853, leaving an only son, *S.*, born in the lifetime of the testator, who died soon after his father intestate, and without male issue. In a suit by the widow of *S.*, claiming as his heir and representative, to recover the share of *U.* as having descended to *S.* absolutely, and to obtain partition:—

Held that, inasmuch as *U.* survived the testator, the gift to the male issue of the testator's

son was void for remoteness, as including objects who might have come into existence after the testator's death, and therefore be incapable of taking. This rule was in a special manner applicable to, and necessary for, the Hindu law of devise, of which it is a fundamental maxim that the persons who are to take a testator's estate must be certain and known at the time of his death. The rule that where there is a gift to a class, and some persons constituting that class cannot take in consequence of remoteness, the whole bequest must fail, as well as the principle of the English Courts in deciding questions of remoteness, that regard is to be had to possible and not to actual events, is applicable to the interpretation of the wills of Hindus.

The gift to the male issue being void, the subsequent limitations were also void. *S.*, therefore, and through him the plaintiff, was entitled to a share in such part of the testator's estate as by reason of the invalidity of the gifts in the will was undisposed of.

The question whether a Hindu widow is entitled to partition is one for the discretion of the Court in each particular case. In this case, where the plaintiff had daughters and grandsons, and the share she was entitled to through her husband was considerable, she was held entitled to a decree for partition. SOUDAMONEY DOSSEE *v.* JOGESH CHUNDER DUTT. *Pontifex*, J. .....**I. L. Rep. 2 Cal. 262, 1877.**

8. —— *Power of Widow to dispose of Land purchased with Money granted in lieu of Maintenance.*] A Hindu widow can dispose by will of lands purchased by her with money granted to her by her husband's family in lieu of maintenance, such money being her absolute property. NELLAIKUMARU CHETTI *v.* MARAKATHAMMAL. *Innes* and *Kindersley*, JJ.....**I. L. Rep. 1 Mad. 166, 1876.**

S. C. under **Hindu Law—Alienation by Widow. 4.**

9. —— *Lands purchased with* Stridhan.] Or of lands purchased by her with her *stridhan*, and money obtained on her own personal credit. VENKATA RAMA RAU *v.* VENKATA SURIYA RAU. *Morgan*, C.J., and *Kindersley*, J .....**Ibid. 281, 1877.**

S. C. under **Hindu Law—Alienation by Widow. 3.**

10. —— *Construction — Vendor and Purchaser—Executor's Estate—Trustee*—Bona Fides

Digitized by Google

HINDU LAW—WILL—*contd.*

— *Notice — Charity — Limitation.*] *B. K.*, a Hindu, by his will, executed in Bombay and dated the 6th January 1802, bequeathed a house to his wife, *R.*, for her life, in trust to allow any impersonation of *Valabh* to reside in it, and appointed four executors by name, but made no gift over of the house to them or to any one else. The will was proved by the four executors on 24th September 1808. On 23rd June 1820, *R.*, claiming as executrix according to the tenor, obtained an order granting probate to her, as well as to the executors expressly appointed. The executors retired, and *R.* acted alone in the management of the testator's estate. On 4th September 1862, *R.* sold the house for its full value to the defendant, who had notice of the charitable trust affecting it. *R.* died in March 1870. On the 17th March 1871, the High Court, on the application of one *A. T.*, revoked the probate of *B. K.*'s will granted to *R.*, but without prejudice to any act done in the due course of administration by *R.*, and granted letters of administration *cum testamento annexo* and *de bonis non* of *B. K.* to *A. T.* On 13th July 1873 *A. T.* died. On 1st May 1875, the plaintiff, who was the only son and heir of *A. T.*, instituted the present suit, to recover from the defendant possession of the trust premises sold to him by *R.* The plaintiff was also one of the surviving heirs of *B. K.*, and by virtue of a release executed to him by the other heirs, was the sole surviving heir who had any beneficial interest in *B. K.*'s estate. The plaintiff, however, did not claim the house as the beneficial owner, but to hold it for the purpose of giving effect to the trust created by the will of *B. K.* On the 28th January 1876, the plaintiff obtained letters of administration *cum testamento annexo* and *de bonis non* of *B. K.*, and it was on these letters that he based his present claim.

Held, 1*st*—That the plaintiff could not maintain the suit merely in the character of administrator *cum testamento annexo.*

2*ndly*—That independently of Acts X. of 1865 and XXI. of 1870, and in the absence of a gift of an estate to the executors, the executors of a Hindu do not, in the character of executors, take any estate, properly so called, in property of the deceased.

Therefore, on the death of *R.*, the devisee for life in trust, there being no gift of the premises to the executors named in the will, the ownership in them devolved upon the surviving heirs of

HINDU LAW—WILL—*contd.*

B. K. subject to the obligation of allowing them to be used for the purposes intended by the testator; *i.e.*, they would be trustees under or by virtue of the will of their ancestor, though succeeding to his property as heirs. But that the estate and trust vested in all the surviving heirs of *B. K.*, and not in the plaintiff alone, and that the conveyances by the other surviving heirs to the plaintiff, though they might operate to vest in him the legal estate in the premises would not transfer to him the trusteeship, so as to enable him to sue alone as trustee.

3*rdly*—That even if the other heirs of *B. K.* had joined in the suit, it could not have been maintained, being a suit by trustees seeking to disaffirm and annul the completed act of a former trustee against one claiming under and by virtue of such Act.

4*thly*—That the words "convey in trust" in Act IX. of 1871, Schedule II., Cl. 134, must be construed to include devises in trust, or as equivalent to the words "vested in trust" of § 10; and the words "good faith" in Article 134 of Schedule II and in Section 10 of that Act do not necessarily involve absence of notice. For the purposes of the Limitation Act there may well be a purchaser *bonâ fide* and for value, who with notice of a trust or equity, takes his purchase; though notice of a trust or equity may be an important element in the question whether there was *bonâ fides* or an absence of *bonâ fides* on the part of one who purchases from a trustee or mortgagee.

Held also, that under the circumstances of this case, the defendant must be held to have purchased in good faith within the meaning of § 10 and Sched. II., Article 134, of Act IX. of 1871, and that the suit was barred by limitation, and that there is nothing in the Limitation Act excluding from its benefit those asserting their right to claim under a *bonâ fide* purchase for value, by reason that those claiming against them are the objects of a *charitable* trust imposed upon such property.

Semble, that as it appeared that the impersonations of *Valabh* (commonly called the Maharajas of the *Valabhacharya* sect) never had availed themselves, and were never likely to avail themselves, of the house, the sale of it by *R.* to the defendant was not a breach of trust. MANIKLAL ATMARAM *v.* MANIKSHA DINSHA COACHMAN. *Green*, J.....**I. L. Rep. 1 Bom. 269, 1876.**

Digitized by Google

HINDU LAW—WILL—*contd.*

11. —— *Power of Hindu to make Unequal Distribution of Ancestral Property by Will.*] A Hindu governed by the Mitakshara law, who has two sons undivided from him, cannot, whether his act be regarded as a gift or a partition, bequeath the whole, or almost the whole, of the ancestral moveable property to one son, to the exclusion of the other. LAKSHMAN DADA NAIK *v.* RAMCHANDRA DADA NAIK. *Melvill* and *Kemball*, JJ...**I. L. Rep. 1 Bom. 561, 1877.**

12. —— *Nuncupative Will—Separate Property.*] A nuncupative will or verbal bequest, by a separated Hindu beyond the limits of the Ordinary Original Civil Jurisdiction of the High Court, not relating to any immoveable property situated within those limits, is valid, though made after the Hindu Wills Act XXI. of 1870 came into force. BHAGWAN DULLAB *v.* KALA SHANKAR. *Westropp*, C.J., and *N. Harridas*, J. .....**I. L. Rep. 1 Bom. 641, 1877.**

13. —— Dewuttur — *Construction—Inconsistent Condition*]. A Hindu testatrix made a will in the following terms:—"I dedicate the auction-purchased property, No. 3496, *Lot Panchgatchia*, Pergunna *Bagliori*, Zillah *Hooghly*" (the property in question) "standing in my name to the Thakur Ishwar Raj Rajeswar that is in my house. And the *Sarodia*, *Pooja* and other ceremonies that are being performed in the house will be performed as hitherto. After all these acts have been observed, from the proceeds of the said property, if there be a surplus in the profits, then the family will be supported therefrom. This property of mine will not be liable for the debts of any person. None will be able to transfer it. None will have the rights of gift and sale. I appoint my eldest son, *Doorga Churn Chuttopadhya*, and the second son, *Sama Churn Chuttopadhya*, to be executors of this will. When my younger son, *Bhagobati Churn Chuttopadhya*, who is now a minor, arrives at majority, he will similarly be an executor. Collecting the proceeds of this property, you will deduct therefrom the rent, revenue, taxes, charges for repairs, and whatever other expenses may be necessary for the preservation of the property, and the collection charges; and will defray from the aforesaid profits the expenses of the daily worship of the said Thakur, the expenses of the *Parbans* on his account, the expenses of the *Doorga Pooja*, the *Shama Pooja*, and the *Jagadhatri Pooja*, the expenses of the annual *Shradh* of my father-in-law, of the first *Shradh* of myself and my husband after our death, and the expenses of our *Ekodista* and *Sapindikaram*. If there be a surplus after deducting the said expenses, it will also be disbursed in the manner aforesaid. After your death, he who will be my heir for the time being will be the executor of this will. Beyond performing the aforesaid worship of the *Deb* and ceremonies and *Poojas*, none of my heirs shall have any interest in or profit from my property. And they will have no power of gift or sale over it. And it will not be attached or sold on account of their debts." The interest of Doorga Churn in the property having been attached in execution of a decree obtained against him;—*Held*, that the property was not wholly *dewuttur*, but that the effect of the will was to create a charge upon the property in the hands of the executors for the expenses of the daily worship of the idol in the manner in which such service was performed at the time of the death of the testatrix, and of the *Poojas Shradhs*, and religious ceremonies for which provision was made in the will, and that, after defraying such expenses, the surplus belonged to the members of the joint family, of whom Doorga Churn was one, and that his interest in the property was liable to be attached and sold in execution of the decree against him, and that the direction in the will that "this property of mine shall not be liable for the debts of any person. None will be able to transfer it. None will have the rights of gift and sale," being inconsistent with the interest given, were wholly beyond the power of the testatrix, and must be rejected as inoperative. ASHUTOSH DUTT *v.* DOORGA CHURN CHATTERJEE.....**L. Rep. 6 I. A. 182, 1879.**

HINDU WIDOW—Alienation by—*Stridhan—Soudayakam.*

See **Hindu Law—Alienation by Widow. 2.**

MADHAVARAO *v.* TIRTHA SAMI... **I. L. Rep. 1 Mad. 307.**

—— Alienation by—by Will of Lands purchased with Money granted in lieu of Maintenance.

See **Hindu Law—Alienation by Widow, 4,** and **Hindu Law—Will. 8.**

NELLAIKUMARU *v.* MARAKATHAMMAL...**I. L. Rep. 1 Mad. 166.**

Digitized by Google

HINDU WIDOW—*contd.*

—— Alienation by—by Will of Land purchased with *Stridhan*.

See **Hindu Law—Alienation by Widow. 3.**

VENKATA *v.* VENKATA.....**I. L. Rep. 1 Mad. 281.**

—— Estate of.

See **Hindu Law — Alienation by Widow. 1.**

MUSST. BHAGBUTTI *v.* CHOWDHRY BHOLANATH.....**L. Rep. 2 I. A. 256; I. L. Rep. 1 Cal. 104.**

—— Forfeiture of Estate of.

See **Hindu Law—Forfeiture of Widow's Estate.**

PRAG DAS *v.* HARI KISHEN...**I. L. Rep. 1 All. 503.**

—— Gift by.

See **Hindu Law—Gift. 3.**

RUDR NARAIN SINGH *v.* RUP KUAR...**I. L. Rep. 1 All. 734.**

—— Incontinence of—creates no Forfeiture of Estate vested by Inheritance.

See **Hindu Law—Disqualification to Inherit. 3. 4. 7.**

GANGA JATI *v.* GHASITA.....**I. L. Rep. 1 All. 46.**

BHAVANI *v.* MAHTAB KUAR...**I. L. Rep. 2 All. 171.**

HONAMA *v.* TIMANBHAT.....**I. L. Rep. 1 Bom. 559.**

Nor does it disqualify her from inheriting her Grandmother's Property, whether *Stridhan* or not.

See **Hindu Law—Disqualification to Inherit. 3.**

GANGA JATI *v.* GHASITA.....**I. L. Rep. 1 All. 46.**

But disqualifies her from inheriting to Son.

See **Hindu Law—Disqualification to Inherit. 5.**

RAMNATH *v.* DURGA...**I. L. Rep. 4 Cal. 550.**

—— Maintenance of.

See the cases under **Hindu Law—Maintenance of Widow.**

HINDU WIDOW—*contd.*

—— Personal Decree against—Rights of Reversionary Heir, and of Purchaser at Execution Sale.

See **Personal Decree against a Hindu Widow.**

BAIJIN DOOBEY *v.* BRIJ BHOOBUN..**L. Rep. 2 I. A. 275; I. L. Rep. 1 Cal. 133.**

—— Remarriage of.

See **Hindu Law—Remarriage of Widow.**

MURUGAYI *v.* VIRAMAKALI...**I. L. Rep. 1 Mad. 226.**

—— Represents the Estate.

See **Res Judicata. 26.**

NANDKUWAR *v.* RADHA KUARI...**I. L. Rep. 1 All. 282.**

—— Residence by—in Family House unnecessary to entitle her to Maintenance.

See **Hindu Law—Maintenance of Widow. 2. 3. 7.**

—— Right of—holding Husband's Share by Inheritance, to Pre-emption.

See **Pre-emption. 9.**

PHULMAN RAI *v.* DANI KUARI... **I. L. Rep. 1 All. 452.**

—— Right of—to Reside in Family House.

See **Hindu Law—Widow's Right of Residence in Family House.**

GAURI *v.* CHANDRAMANI.....**I. L. Rep. 1 All. 262.**

—— Right of—to Succeed to Shebaitship.

See **Hindu Law—Adoption. 2.**

JANOKEE DEBEA *v.* GOPAUL ACHARJEA.....**I. L. Rep. 2 Cal. 365.**

—— Suit by—to Set Aside Adoption by her Daughter-in-law

See **Right to Sue. 3.**

JAMOONA DASSYA *v.* BAMASOONDERAI...**L. Rep. 3 I. A. 72; I. L. Rep. I. Cal. 289.**

HOLDING NOT LIABLE TO ENHANCEMENT.

See **Bengal Act VIII. of 1869.**

SAL SAHOO *v.* DEO NARAIN SINGH. **I. L. Rep. 3 Cal. 781.**

Digitized by Google

HOUSEBREAKING—*Penal Code*, §§ 441, 456—*Criminal Intention.*] The accused persons, execution creditors, in company with an authorized bailiff, broke open the complainant's door before sunrise with intent to distrain his property, for which they were convicted on a charge of lurking housetrespass by night or housebreaking by night. *Held*, that as they were not guilty of the offence of criminal trespass, there being no finding of any such intent as is required to constitute that offence, and that as criminal trespass is an essential ingredient of either of the offences with which they were charged, the conviction must be quashed. *In the matter of* JOTHARAM DAVAY. *Innes* and *Muttusamy Ayyar*, JJ...**I. L. Rep. 2 Mad. 30, 1878.**

S. C. under **High Court Criminal Procedure Act X. of 1875, § 147. 5.**

HOUSEBREAKING BY NIGHT.

See **Conviction on several Charges. 1.**

REG. *v.* TUKYA...**I. L. Rep. 1 Bom. 214.**

HOUSEBREAKING TO COMMIT THEFT.

See **Conviction on several Charges. 1.**

REG. *v.* TUKYA...**I. L. Rep. 1 Bom. 214.**

HOUSES IN LUCKNOW—Effect of Lord Canning's Proclamation of 15th of March 1858, and Sir James Outram's of 22nd of March 1858.

See **Confiscation in Oudh. 1. 2.**

NAWAB MALKA JAHAN *v.* DEPUTY COMMISSIONER OF LUCKNOW. **L. Rep. 6 I. A. 63.**

PRINCE MIRZA JEHAN *v.* NAWAB ASSUR BAHU...**L. Rep. 6 I. A. 76 ; I. L. Rep. 4 Cal. 727.**

HOWLA RIGHT—Suit for Possession and Mesne Profits by establishing Plaintiff's—Limitation.

See **Bengal Act VIII. of 1869, § 27. 2.**

KHAJAH ASHANOOLLAH *v.* RAMSHONE...**I. L. Rep. 1 Cal. 325.**

HUNDI — Bankruptcy of Acceptor — Suit against Drawer and Acceptor residing within Jurisdiction of different Courts.

See **Procedure—Civil. 1.**

BASANT RAM *v.* KOLAHAL...**I. L. Rep. 1 All. 392.**

—— Insufficiently stamped—Admissibility of —in Evidence.

See **Stamp. 3.**

MOTHOORA MOHUN *v.* PEARY MOHUN...**I. L. Rep. 4 Cal. 259.**

—— Payable in Bombay, indorsed and delivered at Ajmere—Whole Cause of Action against Indorsees does not arise in Bombay.

See **Letters Patent — Bombay — 1865, Cl. 12.**

SUGANCHAND *v.* MULCHAND...**12 Bom. H. C. Rep. 113 ; I. L. Rep. 1 Bom. 23.**

See **Onus Probandi. 2.**

ABDUL KARIM *v.* MANJI...**I. L. Rep. 1 Bom. 295.**

1. —— *Notice of Dishonour.*] Previous formal notice of dishonour of a *hundi* is not necessary before suit brought, unless it can be shown that the parties charged have been prejudiced by such omission. GOBIND RAM MARWARY *v.* MATHOORA SABOOYA. *Jackson* and *Kennedy* JJ.....**I. L. Rep. 3 Cal. 339 ; 1 Cal. Rep. 429, 1878.**

2. —— *Rights and Liabilities of Drawer—Drawee and Payee.*] Immediately on failure of payment of a draft at sight, whatever may be the real state of account between the drawer and drawee, the former becomes liable to the payee for the amount which would place him at the stipulated time and place in the same position as if the money had been duly paid. Where there is no acceptance, no cause of action can arise to the payee as against the drawee. Nor is the legal relation between the drawer and payee altered by a partial acceptance, the contract being in its nature indivisible ; much less can any mere promise to pay part at a future time in any way satisfy the payee's claim, or postpone his right to reimbursement of his loss from the drawer. SHETH KAHANDAS NARANDAS *v.* DHAIABHAI *West* and *Pinhey*, JJ...**I. L. Rep. 3 Bom. 182, 1879.**

Digitized by Google

HUQQ-I-CHAHARAM—Limitation to Suit for—based on Custom.

See **Limitation. 94.**

KIRATH CHAND *v.* GANESH PRASAD. **I. L. Rep. 2 All. 358.**

—— Suit for—founded on Custom, not maintainable in Small Cause Court.

See **Small Cause Court—Mofussil. 4.**

NANKU *v.* BOARD OF REVENUE...**I. L Rep. 1 All. 444.**

HURT—Causing—and Rioting.

See **Offence made up of several Offences.**

EMPRESS *v.* RAM ADHIN... **I. L. Rep. 2 All. 139.**

—— Grievous.

See **Grievous Hurt.**

EMPRESS *v.* SAHAE...**I. L. Rep. 3 Cal. 623.**

HUSBAND AND WIFE—Action for Trover by Wife against Husband.

See **Husband and Wife. 1.**

HARRIS *v.* HARRIS...**I. L. Rep. 1 Cal. 285.**

—— Capacity of Wife to contract.

See **Hindu Law—Capacity of Married Woman to contract.**

NATHULAL *v.* JAVHER...**I. L. Rep. 1 Bom. 121.**

See **Married Women's Property Act III. of 1874.**

ALUMUDDY *v.* BRAHAM.....**I. L. Rep. 4 Cal. 140.**

See **Married Woman's Separate Property. 2. 3.**

HURST *v.* MUSSOORIE BANK.....**I. L. Rep. 1 All. 762.**

BERESFORD *v.* HURST...**Ibid. 772.**

—— Cruelty.

See **Restitution of Conjugal Rights. 1.**

YAMUNABAI *v.* PENDSE.....**I. L. Rep. 1 Bom. 164.**

—— Custody of Minor Children on a Divorce.

See **Mahomedan Law—Divorce. 1.**

HAMID ALI *v.* IMTIAZAN.....**I. L. Rep. 2 All. 71.**

HUSBAND AND WIFE—*contd.*

—— Desertion.

See **Divorce. 1. 3.**

WOOD *v.* WOOD.....**I. L. Rep. 3 Cal. 485.**

FOWLE *v.* FOWLE.....**I. L. Rep. 4 Cal. 260.**

—— Divorce—Alimony.

See **Divorce. 3.**

FOWLE *v.* FOWLE...**I. L. Rep. 4 Cal. 260.**

—— Divorce—Connivance.

See **Divorce. 2.**

WILLIAMS *v.* WILLIAMS.....**I. L. Rep. 3 Cal. 688.**

—— Divorce—Delay.

See **Divorce. 2.**

WILLIAMS *v.* WILLIAMS.....**I. L. Rep. 3 Cal. 688.**

—— Divorce—Hindu Law.

See **Hindu Law—Divorce.**

KUDOMEE DOSSEE *v.* JOTEERAM KOLITA...**I. L. Rep. 3 Cal. 305.**

See **Hindu Law—Inheritance—Illegitimate Son. 4.**

RAHI *v.* GOVIND.....**I. L. Rep. 1 Bom. 97.**

See **Penal Code, § 494.**

REG. *v.* SAMBHU.....**I. L. Rep. 1 Bom. 347.**

—— Divorce—Mahomedan Law.

See the cases under **Mahomedan Law—Divorce.**

—— Dower.

See the cases under **Mahomedan Law—Dower.**

—— Liability of Husband for Debts contracted by Wife in course of separate Business Carried on by Wife alone.

See **Married Women's Property Act III. of 1874.**

ALLUMUDDY *v.* BRAHAM...**I. L. Rep. 4 Cal. 140.**

—— Marriage between persons of Different Castes.

See **Hindu Law—Marriage.**

NARAIN *v.* RAKHAL...**I. L. Rep. 1 Cal. 1.**

Digitized by Google

HUSBAND AND WIFE—*contd.*

—— Marriage in Asura Form.

See **Hindu Law — Marriage in Asura Form.**

JAIKISONDAS *v.* HARKINSONDAS...**I. L. Rep. 2 Bom. 9.**

—— Marriage in India between Persons with English Domicile—Succession to Moveable Property.

See **Indian Succession Act X. of 1865, § 4.**

MILLER *v.* ADMINISTRATOR GENERAL OF BENGAL.....**I. L. Rep. 1 Cal. 412.**

—— Parsis—Separate Property.

See **Married Woman's Separate Property. 1.**

DHANJIBHAI *v.* NAVAZBAI...**I. L. Rep. 2 Bom. 75.**

—— Restitution of Conjugal Rights—Cruelty.

See **Restitution of Conjugal Rights. 1.**

YAMUNABAI *v.* PENDSE.....**I. L. Rep. 1 Bom. 164.**

—— Restitution of Conjugal Rights—Form of Decree.

See **Restitution of Conjugal Rights. 2.**

FURZAND HOSSEIN *v.* JANU BIBEE. **I. L. Rep. 4 Cal. 588.**

See **Civil Procedure Code, Act VIII. of 1859, § 200.**

AJNASI KUAR *v.* NARRAYAN MORESHWAR...**I. L. Rep. 1 All. 501.**

—— Restitution of Conjugal Rights—Right of Mahomedan Wife to refuse Cohabitation until Payment of her Dower.

See **Mahomedan Law—Dower. 2.**

EIDAN *v.* MAZHAR HUSAIN...**I. L. Rep. 1 All. 483.**

—— Separate Business of Wife.

See **Married Women's Property Act III. of 1874.**

ALLUMUDDY *v.* BRAHAM...**I. L. Rep. 4 Cal. 140.**

HUSBAND AND WIFE—*contd.*

—— Separate Estate—Lands purchased with Sale proceeds of Legacy to sole and separate use of Wife.

See **Married Woman's Separate Property. 2. 3.**

HURST *v.* MUSSOORIE BANK...**I. L. Rep. 1 All. 762.**

BERESFORD *v.* HURST...**Ibid. 772.**

—— Wife absenting herself from Husband—when justifiable.

See **Hindu Law—Husband and Wife.**

NATHUBHAI *v.* JAVHER.....**I. L. Rep. 1 Bom. 121, 122.**

See **Hindu Law—Maintenance of Wife. 2.**

SIDLINGAPA *v.* SIDAVA...**I. L. Rep. 2 Bom. 634.**

See **Mahomedan Law—Dower. 2.**

EIDAN *v.* MAZHAR...**I. L. Rep. 1 All. 483.**

See **Restitution of Conjugal Rights. 1.**

YAMUNABAI *v.* PENDSE.....**I. L. Rep. 1 Bom. 164.**

—— *Married Women's Property Act III. of* 1874, §§ 7 *and* 8—*Indian Succession Act X. of* 1865, § 4—*Action for Trover—Suit by Wife against Husband.*] The plaintiff was at the time of her marriage, in 1870, possessed in her own right of certain articles of household furniture, given to her by her mother. Since January 1875 she had lived separate from her husband, but the furniture remained in his house. In February 1875 her husband mortgaged the property to *B.*, without the plaintiff's knowledge or consent. In June 1875 one *K. B.*, a creditor, obtained a decree against the husband and *B.*, in execution of which he seized the furniture as the property of the husband, and it remained in the Court subject to the seizure. In July 1875 the plaintiff instituted a suit in her own name in trover to recover the articles of furniture or their value from her husband, on the ground that they were her separate property, and in August 1875 she preferred a claim in her own name to the property, under § 88 of Act IX. of 1850. It was found on the facts that the furniture was the property of the plaintiff. The husband and wife were persons subject to the provisions of

Digitized by Google

HUSBAND AND WIFE—*contd.*

Act X. of 1865, § 4, and the Married Women's Property Act of 1874 :—

Held, that under § 7 of Act III. of 1874 the suit was maintainable by the plaintiff against her husband.

Held, also, that a judgment for the plaintiff in the suit to recover the furniture or its value from her husband, could not, without satisfaction, change the property in the goods and vest it in the husband from the time of the conversion, and, therefore, that the claim under Act IX. of 1850 was also maintainable. HARRIS *v.* HARRIS. *Garth*, C. J., and *Pontifex*, J....**I. L. Rep. 1 Cal. 285, 1876.**

IDOL—Power of Shebait to bind Estate of.

See **Dewutter. 1. 2.**

PROSUNNO KUMARI *v.* GOLAB CHAND...**L. Rep. 2 I. A. 145.**

KONWAR DOORGANATH *v.* RAMCHUNDER...**L. Rep. 4 I. A. 52; I. L. Rep. 2 Cal. 341.**

—— Right to Exclusive Worship of—Right to Turn of Worship of—Limitation Act IX. of 1871, Sched. II., Arts. 118-131.

See **Right to Worship of Idol.**

EHSAN CHUNDER *v.* MONMOHINI... **I. L. Rep. 4 Cal. 683.**

—— Right to Turn of Worship of.

See **Right to Sue. 6.**

DEBENDRONATH *v.* ODIT CHURN... **I. L. Rep. 3 Cal. 390.**

—— Trust in favour of.

See **Hindu Law—Partition. 7.**

RAM COOMAR *v.* JOGENDER NATH. **I. L. Rep. 4 Cal. 56.**

—— Will—Dedication by Will of Property for.

See **Hindu Law—Will. 13.**

ASHUTOSH *v.* DOORGA CHURN...**L. Rep. 6 I. A. 182.**

—— Worshippers of—Right to sue for Breach of Trust of—Property.

See **Right to Sue. 10.**

RADHABAI *v.* CHIMNAJI RAMJI SALI...**I. L. Rep. 3 Bom. 27.**

IJARA—Right of Renewal.

See **Right of Occupancy. 3.**

JARDINE, SKINNER & Co. *v.* RAM SURAT SOONDARY DEBI .....**L. Rep. 5 I. A. 164.**

IJARADAR—Enhancement of Rent by.

See **Enhancement of Rent. 7.**

DOORGA PROSAD *v.* JOYNARAIN...**I. L. Rep. 2 Cal. 474.**

IJMAILI PROPERTY—Suit for Rent of.

See **Landlord and Tenant. 4.**

ANNODA CHURN *v.* KALLY COOMAR. **I. L. Rep. 4 Cal. 89.**

ILLEGAL COMPANY.

See **Company. 1.**

BHIKAJI *v.* BAPU.....**I. L. Rep. 1 Bom. 550.**

ILLEGAL CONSIDERATION.

See **Contract. 18.**

FATEH SINGH *v.* SANWAL SINGH. **I. L. Rep. 1 All. 761.**

ILLEGAL CONTRACT—*Government Ferry Farm—Admission of Partner.*] *M.* took a lease for three years of a Government ferry, and covenanted with the Magistrate who granted the lease, not to sublet or assign the lease without the leave or license of the Magistrate. *M.* subsequently admitted *B.* as his partner to share with him equally in the profits to be derived from the lease :—

Held, that such partnership was not void by reason of the covenant not to underlet or assign the lease. GAURI SHANKAR *v.* MUMTAZ ALI KHAN...**I. L. Rep. 2 All. 411, 1879, F. B.**

ILLEGAL GRATIFICATION — Acceptance of—by Public Servant.

See **Penal Code, § 165.**

EMPRESS *v.* KAMPTA PRASAD...**I. L. Rep. 1 All. 530.**

—— Attempt to obtain.

See **Attempt. 2.**

EMPRESS *v.* BALDEO SAHAI...**I. L. Rep. 2 All. 253.**

—— Receipt of—by Public Servant—Poddar of Bank of Bengal.

See **Penal Code, § 21, Cl. 9.**

MODUN MOHUN...**I. L. Rep. 4 Cal. 376.**

Digitized by Google

ILLEGAL OATH ADMINISTERED BY ARBITRATORS — Validity of Award founded on Evidence taken on.

See **Oaths Act X. of 1873, §§ 8, 10, 13.**

WALI-UL-LA *v.* GHULAM ALI...**I. L. Rep. 1 All. 535.**

ILLEGALITY OF OATH OTHER THAN IN PRESCRIBED FORM ADMINISTERED BY ARBITRATORS — Objection to—first taken on Special Appeal.

See **Oaths Act X. of 1873, §§ 8, 10, 13.**

WALI-UL-LA. *v.* GHULAM ALI...**I. L. Rep. 1 All. 535.**

ILLEGITIMATE CHILD—Custody of.

See **Maintenance.**

LAL DAS *v.* NEKUNJO BHAISHIANI. **I. L. Rep. 4 Cal. 374.**

ILLEGITIMATE SON OF HINDU OF ONE OF THE THREE REGENERATE CLASSES (BRAHMANS, KSHATRIYAS, VAISYAS) NOT ENTITLED TO INHERIT, BUT TO MAINTENANCE ONLY.

See **Hindu Law — Inheritance — Illegitimate Son. 2. 4. 5.**

NILMONEY SINGH DEY *v.* BANNESHUR...**I. L. Rep. 4 Cal. 91.**

RAHI *v.* GOVIND...**I. L. Rep. 1 Bom. 97.**

NARAYAN *v.* LAVING...**I. L. Rep. 2 Bom. 140.**

ILLEGITIMATE SON OF SUDRA BY CONTINUOUS CONCUBINE ENTITLED TO INHERIT WITH LEGITIMATE SONS.

See **Hindu Law — Inheritance — Illegitimate Sons. 1 to 5.**

GOPAL *v.* HANMANT...**I. L. Rep. 3 Bom. 278.**

NARRAIN *v.* RAKHAL...**I. L. Rep. 1 Cal. 1.**

SARASUTI *v.* MANU...**I. L. Rep. 2 All. 134.**

RAHI *v.* GOVIND...**I. L. Rep. 1 Bom. 97.**

NARAYAN *v.* LAVING...**I. L. Rep. 2 Bom. 140.**

ILLEGITIMATE SON OF SUDRA (OR GOSAVI), OFFSPRING OF ADULTERY, NOT ENTITLED TO INHERIT—BUT ONLY TO MAINTENANCE.

See **Hindu Law — Inheritance — Illegitimate Son. 4. 5. 6.**

RAHI *v.* GOVIND...**I. L. Rep. 1 Bom. 97.**

NARAYAN *v.* LAVING... **I. L. Rep. 2 Bom. 140.**

VIRARAMUTHI *v.* SINGARAVELU... **I. L. Rep. 1 Mad. 306.**

ILLEGITIMATE SON — MAINTENANCE OF — Alienation of Ancestral Estate for.

See **Hindu Law—Maintenance of Illegitimate Son. 3.**

RAJAH PARICHAT *v.* ZALIM SINGH. **L. Rep. 4 I. A. 159 ; I. L. Rep. 3 Cal. 214.**

—— Offspring of Adulterous Intercourse among Sudras (or Gosavis) entitled to.

See **Hindu Law—Maintenance of Illegitimate Son. 1. 2.**

VIRARAMUTHI *v.* SINGARAVELU... **I. L. Rep. 1 Mad. 306.**

NILMONEY SINGH DEO *v.* BANNESHUR...**I. L. Rep. 4 Cal. 91.**

See **Hindu Law — Inheritance — Illegitimate Son. 4. 5. 6.**

RAHI *v.* GOVIND...**I. L. Rep. 1 Bom. 97.**

NARAYAN *v.* LAVING...**I. L. Rep. 2 Bom. 140.**

ILLICIT SALE OF LIQUOR—*Act X. of 1871, §§ 57, 62—License.*] On the 30th of October 1877, a license for the sale of spirituous and fermented liquors by retail was granted to *N.*, to have effect from the 30th of October to the 31st of December 1877. The expiry of the license was not noticed by the revenue authorities themselves, and *N.* continued to sell spirituous and fermented liquors until the 11th of January 1878, when, it occurring to her to obtain a renewal of the license, she applied for and obtained a renewal of the license up to the 31st of March 1878, such renewal being indorsed as follows on the license (which was then handed back to her):—"This license is extended up to the 31st of March 1878." One of the condi-

Digitized by Google

ILLICIT SALE OF LIQUOR—*contd.*

tions of the license was that a monthly fee of Rs. 8-5-4 should be paid to Government in advance for every month of the term for which the license was granted. In accordance with this condition, *N.* paid Rs. 25 on the license being first granted, and Rs. 25 on its renewal, which sum was accepted by the Government without any objection, nor was anything said to *N.*, at the time of the renewal, about her having incurred any of the penalties provided by Act X. of 1871. On the 14th of January 1878, three days after the renewal of the license, *N.*'s servant was convicted by the Assistant Magistrate, under § 62 of Act X. of 1871, of the illicit sale of liquors between the 1st of January and the 10th of January 1878, and sentenced to pay a fine of Rs. 100, or to undergo imprisonment of one month in the civil jail :—

Held, that the conviction could not be maintained. The renewal indorsement on the license, without any objection stated, and the payment and acceptance, in advance, of the whole fees due under the license, were strong circumstances of condonement on the part of the Government of any neglect that *N.* may have been guilty of, and showed the possession by *N.* of a license with all the conditions fulfilled, and more than fulfilled, entitling her to sell spirits and liquors from the 30th of October 1877 to the 30th of March 1878, continuously. At least after the conduct of the revenue authorities, it did not lie in their mouths to contend that between the 1st and 11th of January, *N.* was acting without any authority or license from them. In no view of the case could *N.* be regarded as other than a licensed vendor for the whole period up to the 31st of March 1878, during which the license was in operation. There was no reason why the provisions of § 32 of Act X. of 1871—which enacts that where there is an intention not to renew a license, notice of such intention shall be given to the Collector at least 15 days before the year expires, and that if such notice be not given and the Collector does not recall such license, it shall remain in force as if it had been formally renewed—should not apply to the case of a license for less than a year; nor was there anything in the Act to show that it was the intention of the Legislature that it should be otherwise in the case of short licenses.

Even if things were entire, and there were none of the peculiarities relating to the excise authorities above stated, it would be quite allowable to hold that the term "licensed vendor" in § 62 must be taken to mean a vendor licensed or unlicensed within the meaning of the sections of the Act on licenses generally, and constituting Ch. VI., and a person not being in that position—as *N.* clearly was not—could not be said to have incurred the penalty of § 62. EMPRESS *v.* SEYMOUR. *Stuart*, C.J...**I. L. Rep. 1 All. 630, 1878.**

ILLICIT SALE OF LIQUOR—*contd.*

Note.—As to this case *Turner*, J., said in *Empress* v. *Mohindra Lal* (I. L. Rep. 1 All. 638—*infra* at pp. 640, 641)—" The learned Chief Justice considered that any breach of the Act had been condoned by the action of the Collector in receiving the fees and renewing the license; but he doubted whether in advertence to the terms of § 32 of the Act the master of Seymour could be held to be unlicensed, and, therefore, whether any offence had been committed. I am constrained to say that I cannot regard the acceptance by the excise authorities of an excise fee in ignorance of a contravention of the law as a condonation of the offence if the offence had been committed. The acceptance of the fee would not warrant the quashing a conviction for sales made prior to the acceptance of the fee, if those sales were in fact illegal, and if the sales on which the prosecutions were founded were illegal in *Dharamdas's* case (I. L. Rep. 1 All. 635) I should have held them equally illegal in Seymour's case." But the learned Judge agreed with the reasoning of the Chief Justice as to the legality of the conviction in reference to the terms of § 32 of the Act, as will be seen by reference to *Empress* v. *Mohindra Lal*, *infra*. 3.

2. —— *Act X. of* 1871, § 62.] *D.* was the holder of a license for the sale of spirituous and fermented liquors by retail for a period terminating on the 31st of December 1877. On the 10th of January 1878, his license not having been renewed by the Collector, *D.* sold some spirits by retail. On these facts he was convicted of the illicit sale of liquor. Subsequently to his conviction he applied for a renewal of his license.

Held, that under such circumstances his conviction was good. EMPRESS *v.* DHARAMDAS. *Stuart*, C.J.....**I. L. Rep. 1 All. 635, 1878.**

3. —— *Act X. of* 1871, §§ 32, 57, 62—*License.*] The petitioners' mistress held a li-

Digitized by Google

ILLICIT SALE OF LIQUOR—*contd.*

cense for the sale of fermented liquors by retail for a period of three months, terminating on the 31st December 1877. The holder of the license did not give to the Collector any notice of her intention not to renew the license, nor had the license been recalled by the Collector prior to the 8th of January 1878. From the 1st to the 8th January 1878, inclusive, the petitioners sold by retail fermented liquors. On these facts they were convicted, under § 62 of Act X. of 1871, of the illicit sale of liquor:—

Held, that the provisions of § 32 of Act X. of 1871 applied to the licenses which, under the rules made by the chief revenue authority for the N.-W. Provinces, may be, and in practice are, granted for periods of three months. Notice must be given of the intention not to renew the license, and if no such notice is given and the license is not recalled, the license granted to, and the engagement taken from, the holder of the license remain in force as if they had formally been renewed. Inasmuch, therefore, as no notice had been given by the petitioners' mistress of an intention not to renew her license, and as it had not been recalled, she still enjoyed the privilege of selling in virtue of the authority conferred by it, and, therefore, on the facts found, the petitioners could not be convicted as unlicensed vendors. If the petitioners' mistress omitted to pay the monthly fee for her license in advance, she could be prosecuted under § 57 of the Act; but the petitioners, not being the holders, but only the servants of the holder of the license, could not be convicted under that section. *Empress* v. *Seymour* (I. L. Rep. 1 All. 630) observed upon. EMPRESS *v.* MOHINDRA LALL. *Turner*, J.....**I. L. Rep. 1 All. 638, 1878.**

IMMEDIATE POSSESSION.

See **Limitation. 35.**

MADHUB CHUNDER *v.* SHAM CHAND.....**I. L. Rep. 3 Cal. 243.**

IMMORAL CONSIDERATION—Gift on.

See **Gift. 1.**

LACHMI NARAIN *v.* WILAYTI BEGAM...**I. L. Rep. 2 All. 433.**

—— Past Cohabition is not.

See **Contract. 4.**

MAN KUAR *v.* JASODHA KUAR...**I. L. Rep. 1 All. 478.**

IMMORAL CUSTOM — *Dancing Girls* — *Public Policy.*] In a suit by the dancing girls of a temple for a declaration of the rights of the Deva Dasis of the temple in regard to (1) the dedication of Deva Dasis, (2) to the Dharmakarta's power to fine and suspend them, and that the Court should ascertain and declare the rights of the plaintiffs, the existing Deva Dasis, as to the exclusion of all other Deva Dasis save those related to, or adopted by, some one of the Deva Dasis for the time being, or those elected and proposed to the Dharmakarta for dedication; and that the Dharmakarta might be restrained from stamping and dedicating other Deva Dasis but such as were duly approved, and that inquiry might be held whether the Dharmakarta was a fit person for that office:—

Held, that what the plaintiffs sought was that they should be declared to have by custom a veto on the introduction of any new Deva Dasi, or, in other words, they claimed by custom a monopoly in their profession of Deva Dasi; and the Court could not shut its eyes to what was the main purpose of that profession, as it was perfectly notorious that it was prostitution and the gains from that source.

Assuming, therefore, that the evidence bore out the statements of the plaintiffs, and established that by the custom of the temple they had the rights they claimed, and that the custom in some respects fulfilled the requisites of a valid custom, it was still apparent that the Court, in making the declaration prayed for, would be recognizing an immoral custom—a custom, that is, for an association of women to enjoy a monopoly of the gains of prostitution,—a right which no Court could countenance. CHINNA UMMAYI *v.* TEGARA CHETTI. *Innes* and *Kernan*, JJ.....**I. L. Rep. 1 Mad. 168, 1876.**

IMMOVEABLE PROPERTY—COMPUTATION OF VALUE OF INTEREST CREATED IN, FOR PURPOSES OF REGISTRATION— Present Value of Interest, and Amount of Consideration stated in Document, irrespective of Future Profits or Interest, Measure of Necessity to register.

See **Registration. 1. 7. 8. 9. 16. 17. 18. 20.**

KARAN SINGH *v.* RAM LALL.....**I. L. Rep. 2 All. 96.**

SATRA *v.* VISRAM.....**I. L. Rep. 2 Bom. 97.**

Digitized by Google

IMMOVEABLE PROPERTY — COMPUTATION OF VALUE OF INTEREST CREATED IN, FOR PURPOSES OF REGISTRATION —*contd.*

NANA *v.* ANANT.....**Ibid. 353.**

SHANKAR *v.* VISHNU...**I. L. Rep. 1 Bom. 67.**

NANA *v.* ANANT.....**I. L. Rep. 2 Bom. 353.**

NARSAPPA *v.* GORUVAPPA.....**I. L. Rep. 1 Mad. 378.**

RAM D. KOOER *v.* THACOOR ROY... **I. L. Rep. 4 Cal. 61.**

AHMAD BAKSH *v* GOBINDI...**I. L. Rep. 2 All. 216.**

Contra, see **Registration. 19. 21.**

RAJAPATI SINGH *v.* RAM SAKHI KUAR...**I. L. Rep. 2 All. 40.**

DARSHAN SINGH *v.* HANMANTA... **I. L. Rep. 1 All. 274.**

IMMOVEABLE PROPERTY—Execution of Decree of Mofussil Small Cause Court Against.

See **Execution of Decree. 22.**

GOPAL *v.* NANKU...**I. L. Rep. 1 All. 624.**

—— Execution of Decree of Small Cause Court—Presidency Town.

See **Execution of Decree. 24.**

JUGJIVAN...**I. L. Rep 1 Bom. 82.**

—— Gift of separate—to Hindu Wife by her Husband.

See **Hindu Law—Gift. 3.**

RUDR NARAIN SINGH *v.* RUP KUAR ... **I. L. Rep. 1 All. 734.**

—— Given by Hindu Husband to Wife not alienable by her at pleasure.

See **Hindu Law—Stridhan. 3.**

VENKATA *v.* VENKATA. **I. L. Rep. 1 Mad. 281.**

—— Inherited by Grandmother from Grandson, not *Stridhan.*

See **Hindu Law—Stridhan. 2.**

PHUKAR SINGH *v.* RANJIT SINGH... **I. L. Rep. 1 All. 661.**

IMMOVEABLE PROPERTY—*contd.*

—— Interest in.

See **Limitation. 31.**

JUNESWAR DASS *v.* MAHABEER SINGH...**L. Rep. 3 I. A. 1; I. L. Rep. 1 Cal. 163.**

—— Interest in—Decree charging Land.

See **Sale in Execution of Decree. 7.**

MUSAMAT BHAWANI KUAR *v.* GULAB RAI ..**I. L. Rep. 1 All. 348.**

—— Interest in—*Jalkar.*

See **Jalkar.**

PARBUTTY NATH *v.* MUDHO...**I. L. Rep. 3 Cal. 276.**

—— Interest in—Right to Worship of Idol is not.

See **Right to Worship of Idol.**

EHSAN CHUNDER *v.* MONMOHINI... **I. L. Rep. 4 Cal. 683.**

—— Jurisdiction of Small Cause Courts.

See **Small Cause Court—Presidency Town. 2. 3.**

NOWLA OGMA *v.* BALA DHURMAJI. **I. L. Rep. 2 Bom. 91.**

WALJI KARIMJI *v.* JAGGANATH PREMJI...**I. L. Rep. 2 Bom. 84.**

—— Purchased by Hindu Widow with her *Stridhan.*

See **Hindu Law—Alienation by Widow. 3.**

Hindu Law—Stridhan. 3.

Hindu Law—Will. 9.

VENKATA *v.* VENKATA.....**I. L. Rep. 1 Mad. 281.**

—— Purchased by Hindu Widow with Money granted in lieu of Maintenance.

See **Hindu Law—Alienation by Widow. 4.**

See **Hindu Law—Will. 8.**

NELLAI KUMARU *v.* MARAKATHAMMAL ..**I. L. Rep. 1 Mad. 166.**

—— *Toda Garas Hak* payable by *Inamdar* from Rents of Village.

See **Toda Garas Hak.**

MAHARANA FUTTEHSANGI *v.* DESAI KALIANRAI...**L. Rep. 1 I. A. 34.**

Digitized by Google

IMMOVEABLE PROPERTY—*contd.*

—— Standing Crops are—for purposes of Act IX. of 1871.

See **Standing Crops.**

PANDAH GAYI *v.* JENNUDDI...**I. L. Rep. 4 Cal. 665.**

IMPARTIBLE PROPERTY.

See **Hindu Law—Impartible Property.**

DOORGA PERSAD SINGH *v.* DOORGA KONWARI...**I. L. Rep. 4 Cal. 190.**

IMPARTIBLE ZEMINDARY.

See **Hindu Law — Inheritance — Primogeniture.**

CHOWDHRY CHINTAMAN SINGH *v.* MUSST. NOWLUKHO KONWARI. **L. Rep. 2 I. A. 263; I. L. Rep. 1 Cal. 153.**

—— Succession to—for which no Permanent Sunnud has been issued.

See **Succession to Impartible Zemindary, &c.**

SRI RAGHUNADHA *v.* SRI BROZO KISHORO...**L. Rep. 3. I. A. 154; I. L. Rep. 1 Mad. 69.**

—— Transfer of—by Deed of Family Arrangement to Younger Brothers—Succession of Widow thereto as Separate Estate.

See **Hindu Law—Separate Property. 1.**

PERIASAMI *v.* PERIASAMI.....**L. Rep. 5 I. A. 61; I. L. Rep. 1 Mad. 312.**

IMPLIED CONTRACT.

See **Married Woman's Separate Property. 3.**

BERESFORD *v.* HURST...**I. L. Rep. 1 All. 772.**

—— Money paid for Government Revenue during Wrongful Possession—Right to recover.

See **Right to recover Government Revenue paid during Wrongful Possession.**

TILUCK CHAND *v.* SOUDAMINI DASI. **I. L. Rep. 4 Cal. 566.**

IMPLIED TRUST—Hindu Executor—Void Bequest to Unascertained Class—Suit by Heir.

See **Limitation. 38.**

KHERODEMONEY DOSSEE *v.* DOORGAMONEY DOSSEE...**I. L. Rep. 4 Cal. 455.**

IMPLIED WARRANTY—Sale by Sample.

See **Sale of Goods. 1.**

SHOSHI MOHUN *v.* NOBO KRISHTO. **I. L. Rep. 4 Cal. 801.**

IMPRISONMENT—Application for Discharge from.

See **Civil Procedure Code, Act X. of 1877, § 342.**

RATTANSI KALIANJI...**I. L. Rep. 2 Bom. 148.**

IMPRISONMENT FOR CONTEMPT OF COURT—*Jurisdiction—Act X. of* 1877, §§ 341, 342.] The decree in an administration suit directed *A.*, a party to the suit, to pay over a sum of money, which she admitted was in her hands, to her own attorney in the suit, to be applied by him as directed by the decree. *A.* refused to pay over the money, and she was imprisoned for disobedience to the Court's order. After she had been in prison for six months, she applied to the Judge of the Court below, under § 341 of the Civil Procedure Code, to be discharged. This order was refused.

Held, on appeal, that the proceeding under which *A.* had been imprisoned was not in execution of a decree; but that she was imprisoned under process of contempt, and that the provisions of §§ 341 and 342 did not apply to the case.

Per White, J.—The jurisdiction of the High Court to imprison for contempt, is a jurisdiction which it has inherited from the old Supreme Court, and was conferred upon that Court by the Charter of the Crown, which invested it with all the process and authority of the then Court of King's Bench and of the High Court of Chancery in England, and this jurisdiction has not been removed or affected by the new Code of Civil Procedure. MARTIN *v.* LAWRENCE. *Garth*, C.J., and *White*, J .....**I. L. Rep. 4 Cal. 655, 1879.**

IMPRISONMENT IN DEFAULT OF PAYMENT OF FINE.

—— When Fine only inflicted.

See **Criminal Procedure Code, Act X, of 1872, § 309. 1.**

REG. *v.* MUHAMMAD SAIB...**I. L. Rep. 1 Mad. 277.**

—— Under Act VIII. of 1873, § 70.

See **Criminal Procedure Code, Act X. of 1872, § 309. 2.**

EMPRESS *v.* DARBA...**I. L. Rep. 1 All. 461.**

Digitized by Google

IMPRISONMENT IN DEFAULT OF PAYMENT OF FINE—*contd.*

—— Sentence of—cannot be added to Substantive Sentence, so as to give Appeal.

See **Presidency Magistrates' Act IV. of 1877, § 167. 1.**

JOTHARAM DAVAY...**I. L. Rep. 2 Mad. 30.**

IMPROPER ADMISSION OF EVIDENCE—Insufficiently Stamped Document.

See **Appeal—Civil. 20.**

KHOOB LALL *v.* JUNGLE SINGH... **I. L. Rep. 3 Cal. 787.**

—— Power of High Court, on Case Reserved or Certified, to consider Merits.

See **Evidence. 13.**

REG. *v.* HURRIBOLE...**I. L. Rep. 1 Cal. 207.**

See **Power of the High Court, on Case Reserved or Certified, to consider the Merits of the Case. 1.**

REG. *v.* PITAMBER JINA.....**I. L. Rep. 2 Bom. 61.**

—— Unstamped Document.

See **Errors not affecting Merits. 1.**

AFZUL-UN-NISSA *v.* TEJ BAN...**I. L. Rep. 1 All. 725.**

INADEQUACY OF CONSIDERATION.

See **the Cases under Unconscionable Bargain.**

See **Purchase by a Trustee.**

DHONENDHUR CHUNDER *v.* MUTTY LALL...**L. Rep. 2 I. A. 18.**

—— *Suit to set aside a Deed.*] A party seeking to set aside a transaction on the ground of inadequacy of consideration, must show such inadequacy as will involve the conclusion that he either did not understand what he was about, or was the victim of some imposition THE ADMINISTRATOR GENERAL OF BENGAL *v.* JUGGESWAR ROY ... **I. L. Rep. 3 Cal. 192; 1 Cal. Rep. 107, 1877, P. C.**

INADEQUACY OF PRICE — Execution Sale.

See **Sale in Execution of a Decree. 18.**

GIRDHARI *v.* HURDEO NARAIN... **L. Rep. 3 I. A. 230.**

INAM CHITTI—*Vakil and Client—Consideration*—Nudum Pactum.] An agreement, executed by a client to his vakil, after the latter had accepted a *vakalatnama* to act for the former in a certain suit, whereby the client bound himself to pay to the vakil, in the event of his conducting the suit to a successful termination, a certain sum in addition to the vakil's full fees, *held*, *nudum pactum*, and a suit founded on it dismissed as unsustainable. RAMCHANDRA CHINTAMAN *v.* KALU RAJU. *Westropp*, C.J., and *Melvill*, J.....**I. L. Rep. 2 Bom. 362, 1877.**

INAM COMMISSIONER'S DECISION—*Act XI. of* 1852.] In an inquiry held by the Inam Commissioner under Act XI. of 1852, that officer decided that a certain *Inam* village should be continued to the male descendants of the original grantee.

Held, that the Inam Commissioner's decision was only intended to regulate the duration of the exemption of the village from assessment, and not to regulate the enjoyment of it as between the heirs of the original grantee. VASADEV ANANT *v.* RAMKRISHNA NARRAYAN. *Westropp*, C.J., and *Melvill*, J...**I. L. Rep. 2 Bom. 529, 1878.**

INAMDAR — Enhancement of Rent by — Right of.

See **Miras. 2.**

VISHNUBHAT *v.* BABAJI.....**I. L. Rep. 3 Bom. 345, n.**

See **Enhancement of Rent. 5.**

PARSOTAM *v.* KALYAN...**I. L. Rep. 3 Bom. 348.**

—— Miras—*Enhancement of Rent by* Inamdar.] An *inamdar's* power to enhance the rent of *Mirasi* tenants is limited. He cannot demand more rent than what is fair and equitable according to the custom of the country. PRATAPRAV GUJAR *v.* BAYAJI NAMAJI. *West* and *Pinhey*, JJ...**I. L. Rep. 3 Bom. 141, 1878.**

LAKSHMAN *v.* GANPATRAV BALLAL. *Melvill* and *Kemball*, JJ...**Ibid. 145, n.**

"If *Mirasi* land was ever extensively held at a permanently fixed rent, it has long since generally ceased to be so. There must be further proof than the fact that the defendants have been styled *Mirasdars* to entitle them to fixity of rent. The District and Subordinate Judges have not arrived at any finding on the material

Digitized by Google

INAMDAR—*contd.*

issue in the case, *viz.*, Were the first and second defendants, or either of them, and their father or other ancestors, entitled to hold the land in dispute previously to the grant of the same in *inam* to the plaintiff's father, in perpetuity at an invariable rent? If the defendants are not entitled to hold the land at an invariable rent, the plaintiff may, in the absence of any special contract to the contrary, demand such rent for it as he pleases; and if the defendants be, as alleged. *Mirasdars*, they will be entitled to hold the land at such rent as the plaintiff thinks fit to demand, or, if they think his demand too high, to surrender the land to him." *Per Westropp*, C.J., in VISHNUBHAT *v.* BABAJI...**I. L. Rep. 3 Bom. 145, n.**

Note.—With reference to the above remark of *Westropp*, C.J., *West*, J., in delivering judgment in PRATAPRAV *v.* BAYAJI *ubi supra*, says (p. 142) that "the question of a limit to the *inamdar's* right, apart from the absolute fixity of the rent relied on by the defendants, was not dwelt on in argument here, any more than it was dealt with in the judgment of the District Court. The parties seem to have been content to place their cases respectively on the alternative between an invariable limitation on the one hand and an absolutely unlimited right to enhance on the other. Confining the remark of the learned Chief Justice, then, to the case then under trial as it was actually submitted to the Court, it does not appear that they are necessarily in contradiction to the principle laid down in the earlier decision (*Laksman* v. *Ganpat*, *ubi supra*), and it was not the intention of the Court, we think, to say that in no case whatever can an *inamdar* be subject to any limitation at all in enhancing the rent, except where the rent is quite invariable."

2. —— *Rights of Common — Enclosure.*] Land which has been immemorially used as pasture ground of a village, cannot be enclosed at will by an *inamdar* (without regard to the terms of his grant) merely by virtue of his being *inamdar*. VISHWANATH *v.* MAHADAJI. *West* and *Pinhey*, JJ...**I. L. Rep. 3 Bom. 147, 1879.**

INCOME TAX.

See **Road Cess Act (Bengal Act X. of 1871).**

SURNOMOYEE *v.* KOOMAR PURRESH NARAIN...**I. L. Rep. 4 Cal. 576.**

INCOMPETENCE, DISMISSAL FOR.

See **Master and Servant. 1.**

MACGILLIVRAY *v.* JOKAI ASSAM TEA CO...**I. L. Rep. 2 Cal. 33.**

INCOMPLETE CONTRACT—*Act IX. of* 1872, § 39—*Registration—Evidence Act I. of* 1872, § 92, *proviso* 4—*Oral Agreement to rescind Registered Contract.*] *D.* executed a conveyance of a house to *P.*, which was duly registered by *P.*, but the purchase money not being paid, *P.* never obtained possession. Shortly after the registration of the deed, *P.* returned it to *D.* with an indorsement to the affect that it was returned because *P.* was unable to pay the purchase-money. The right, title, and interest of *P.* were subsequently sold in execution of a decree against *P.* The plaintiff became the purchaser at the Court's sale, and sued *D.* for possession. The lower Courts threw out the claim, on the ground that the property had not passed to *P.*, the transaction being an incomplete contract.

Held, 1*st*—That the transaction was not incomplete. The deed purported to make an immediate transfer of the ownership of the house in consideration of value already received, and when executed, delivered and duly registered, it operated as a conveyance, and *P.* became the owner of the house.

2*nd*—That the indorsement of the deed did not affect the property, because it was not registered.

3*rd*—That as the deed of sale had been registered, no oral agreement to rescind it could be proved—under the Evidence Act I. of 1872, § 92, Cl. 4.

4*th*—That the plaintiff, as purchaser of *P.*'s right, was the legal owner of the house, but that he had acquired *P.*'s title subject to all *P.*'s liabilities; and as *D.* had a lien upon the house for the unpaid purchase-money, the plaintiff could not get possession of the house without paying off that charge. UMEDMAL MOTIRAM *v.* DAVU DHONDIBA. *Melvill* and *Kemball*, JJ.....**I. L. Rep. 2 Bom. 547, 1878.**

INCONTINENCE—Of Hindu Mother, disqualifies from inheriting to Son.

See **Hindu Law—Disqualification to Inherit. 5.**

RAMNATH *v.* DURGA SUNDARI...**I. L. Rep. 4 Cal. 550.**

Digitized by Google

INCONTINENCE—*contd.*

—— Of Hindu Widow after Inheritance vested works no Forfeiture.

See **Hindu Law—Disqualification to Inherit. 4.**

BHAVANI *v.* MAHTAB KUAR.....**I. L. Rep. 2 All. 171.**

See **Hindu Law—Inheritance—Widow. 1.**

NEHALO *v.* KISHEN LAL.....**I. L. Rep. 2 All. 150.**

See **Hindu Law—Maintenance of Widow. 12.**

HONAMA *v.* TIMANBHAT.....**I. L. Rep. 1 Bom. 559.**

—— Of Hindu Woman does not disqualify from Inheriting, or keeping Inherited *Stridhan*.

See **Hindu Law—Disqualification to Inherit. 3.**

MUSSAMUT GANGA JATI *v.* GHASITA...**I. L. Rep. 1 All. 46.**

INDIAN ARTICLES OF WAR.

See **Act V. of 1869.**

INDIAN COMPANIES' ACT X. OF 1866.

—— § 4.

See **Company. 1.**

BHIKAJI *v.* BAPU.....**I. L. Rep. 1 Bom. 550.**

—— § 47.

See **Power of Directors to bind Company by Bill of Exchange.**

THE NEW FLEMING S. & W. Co. (LIMITED).....**I. L. Rep. 3 Bom. 439.**

—— § 141—Notice of Appeal—Service of—Extension of Time for Appeal.

See **Company—Winding up. 2.**

LALLAH BARROOMUL *v.* THE OFFICIAL LIQUIDATOR...**I. L. Rep. 4 Cal. 704.**

—— § 149—Transfer of Assets to New Company—Right of Creditors of Transferring Company.

See **Company—Winding up. 1.**

THE FLEMING S. & W. Co. (LIMITED).....**I. L. Rep. 3 Bom. 299.**

INDIAN COMPANIES ACT X. OF 1866 —*contd.*

—— § 154—Transfer of Assets to new Company—Right of Creditors of Transferring Company.

See **Company—Winding up. 1.**

THE FLEMING S. & W. Co. (LIMITED)...**I. L. Rep. 3 Bom. 299.**

—— § 175—Transfer of Assets to New Company—Right of Creditors and Dissentient Shareholders of Old Company—Sanction of Court.

See **Company—Winding up. 1.**

THE FLEMING S. & W. Co. (LIMITED)...**I. L. Rep. 3 Bom. 299.**

INDIAN COUNCILS ACT.

See **Stat. 24 and 25 Vict., C. 67.**

INDIAN DIVORCE ACT IV. OF 1869.

See the cases collected under **Divorce.**

INDIAN INSOLVENT ACT 11 & 12 VIC., C 21.

—— § 23—Order and Disposition.

See **Insolvency. 3. 4. 5.**

—— § 26—Disputed Title, Question of.

See **Insolvency. 6.**

UMBICA CHUNDUN...**I. L. Rep. 3 Cal. 434.**

—— § 36—Right of Witness summoned under, to appear by Counsel.

See **Right of Witness to appear by Counsel.**

In the matter of NURSEY KESSOWJEE... **I. L. Rep. 3 Bom. 270.**

—— § 40—Trust.

See **Insolvency. 7.**

VARDALA CHARRI...**I. L. Rep. 2 Mad. 15.**

INDIAN SUCCESSION ACT X. OF 1865 — § 2.

See **Domicile.**

In the Goods of Elliott...**I. L. Rep. 4 Cal. 106.**

—— § 4—*Husband and Wife—Marriage in India between Persons with English Domicile—Succession to Moveable Property.*] *H. M.*, a British subject, having his domicile in England, married in Calcutta, in April 1866, *C.*, a widow, who at the time of her marriage was also domiciled in England. *C.*, after her marriage with *H. M.*, became entitled as next of kin to shares in the

Digitized by Google

INDIAN SUCCESSION ACT X. OF 1865—*contd.*

moveable properties of her two sons by her former marriage; these shares were not realized or reduced into possession by *C.* during her lifetime, nor by her husband *H. M. C.* died in 1872, leaving her husband, but no lineal descendants. In March 1874, *H. M.* filed his petition in the Insolvent Court, and all his property vested in the Official Assignee. In April 1875, letters of administration of the estate and effects of *C.* were, with the consent of *H. M.*, granted to the Administrator General of Bengal, by whom the shares to which *C.* became entitled as next of kin of her sons were realized. In a special case stated for the opinion of the Court under Ch. VII. of Act VIII. of 1859:—

Held, that the general rule is that the rights which arise on all occasions, whether marriage or succession, whether by the acts of the parties or by operation of law, are as to moveable property governed by the law of the domicile where, in contemplation of law, the moveables are situate.

Section 4 of Act X. of 1865 does not apply in respect of the moveable property of persons not having an Indian domicile; and the domicile of the parties being in England, the English law was to be applied, and therefore the Official Assignee, as assignee of the estate of *H. M.*, was entitled to the whole fund realized by the Administrator General. MILLER *v.* THE ADMINISTRATOR GENERAL OF BENGAL. *Markby*, J.....**I. L. Rep. 1 Cal. 412, 1876.**

—— § 5.

See **Domicile.**

In the Goods of ELLIOTT...**I. L. Rep. 4 Cal. 106.**

—— § 10.

See **Domicile.**

In the Goods of ELLIOTT.....**I. L. Rep. 4 Cal. 106.**

—— § 50—Attestation of Will.

See infra **2.**

See **Attestation of Will.**

In the Goods of ROYMONEY DOSSEE...**I. L. Rep. 1 Cal. 150.**

1. —— § 50, Cl. 3.—*Will—Acknowledgment by Testator.*] It is a sufficient acknowledgment by a testator of his signature to his will if he makes the attesting witnesses understand that the paper which they attest is his will, though they do not see him sign it, or observe any signature to the paper which they attest, provided that the Court is satisfied that the testator's signature was on the will when they attested it. MANIKBAI *v.* HORMASJEE BOMANJI. *Green*, J... **I. L. Rep. 1 Bom 547, 1877.**

2. —— § 50, Cl. 3.— *Will — Attestation. Signature—Mark.*] The direction contained in § 50, Cl. 3, of Act X. of 1865 as to the signature of witnesses attesting an unprivileged will, is not satisfied by the witnesses affixing their marks. It is necessary for the validity of a will that the actual signature, as distinguished from a mere mark, of at least two witnesses should appear on the face of the will. D. FERNANDEZ *v.* R. ALVES. *Melvill* and *F. D. Melvill*, JJ...**I. L. Rep. 3 Bom. 382, 1879.**

—— § 56—*Revocation of Will—Lawful Polygamous Marriage.*] The will of a Jew dated the 23rd of November 1856, made subsequently to his first marriage, but previously to his second marriage in 1872, in the lifetime of his first wife; *Held* to be revoked by such second marriage under § 56 of Act X. of 1865. GABRIEL *v.* MORDAKAI. *Phear*, J....**I. L. Rep. 1 Cal. 148, 1875.**

—— § 98—Gift to Class — Postponement of Period of Distribution—Members of Class born after Testator's death, but before Period of Distribution, take.

See **Will. 5.**

MASEYK *v.* FERGUSSON.....**I. L. Rep. 4 Cal. 670.**

—— 98—*Semble*, Section 98 of Act X. of 1865 applies only to vested interests. *Pontifex*, J. in MASEYK *v.* FERGUSSON ... **I. L. Rep. 4 Cal. 304.**

S. C. under **Will. 4.**

—— §§ 101, 102— Residuary Bequest—Vested Interest—Period of Payment postponed.

See **Will. 4.**

MASEYK *v.* FERGUSSON ... **I. L. Rep. 4 Cal. 304.**

—— § 188.

See **Probate. 3.**

KOMOLLOCHUN *v.* NILRUTTUN...**I. L. Rep. 4 Cal. 360.**

Digitized by Google

INDIAN SUCCESSION ACT X. OF 1865—*contd.*

—— 232—Amendment of Probate.

See **Probate. 4.**

In the Goods of WHITE...**I. L. Rep. 4 Cal. 582.**

—— § 242.

See **Probate. 3.**

KOMOLLOCHUN *v.* NILRUTTUN...**I. L. Rep. 4 Cal. 360.**

—— 250—Right of Creditors of Alleged Heir of Testator to oppose Grant of Probate.

See **Probate. 6.**

DESHPUTTY SINGH...**I. L. Rep. 2 Cal. 208.**

—— § 258—*Grant of Letters of Administration with Will annexed.*] Letters of administration with the will annexed may, under § 258 of Act X. of 1865, be granted after the expiration of seven clear days from the death of the testator. *In the Goods of* WILSON. *Phear*, J...**I. L. Rep. 1 Cal. 149, 1876.**

—— § 269.

See **Executors, Power of.**

SEALE *v.* BROWN...**I. L. Rep. 1 All. 710.**

INDIGENT DAUGHTER THOUGH A CHILDLESS WIDOW, RIGHT OF, TO INHERIT—Benares Law.

See **Hindu Law — Inheritance—Daughter. 3.**

SRIMATI UMA DEYI *v.* GOKOOLANAND DAS...**L. Rep. 5 I. A. 40; I. L. Rep. 3 Cal. 587.**

INDIGO FACTORIES—*Mortgage—Liability of Mortgagee—Lien by Custom*]. *A.* sold to *B.*, the proprietor of an indigo concern, of which *C.* was a mortgagee, certain bags of indigo seed. The agreement of sale contained no pledge of the crop of indigo, the product of the seed, as a security for its price. Subsequent to the sale, and after the seed had been planted, *C.*, under a decree on his mortgage, obtained possession of the factory. In a suit by *A.* against *B.* and *C.* for the price of the seed:—

Held, that, in the absence of any agreement by *C.* to pay the debts of *B.*, *C.* could not be held liable.

INDIGO FACTORIES—*contd.*

There is no lien by custom on an indigo factory, or on the produce thereof, in respect of any debt of the factory. MONOHUR DOSS *v.* MCNAUGHTEN. *Markby* and *Prinsep*, JJ ..**I. L. Rep. 3 Cal. 231, 1877.**

INDUCEMENT BY PERSON IN AUTHORITY—Confession obtained by.

See **Evidence. 15.**

EMPRESS *v.* RAMA BIRAPA...**I. L. Rep. 3 Bom. 12.**

INFANT (and *see* **Minor**)—Adoption of—Agreement between Natural and Adoptive Parents, defining and restricting Rights of.

See **Hindu Law—Adoption. 5. 17.**

RADHABAI *v.* GANESH...**I. L. Rep. 3 Bom. 7.**

RAMASWAMI *v.* VENCATARAMAIYAN. **L. Rep. 6 I. A. 196.**

—— Alienation by Guardian of—Certificated and Uncertificated Guardians—Powers.

See the cases under **Alienation by Guardian.**

See **Mortgage. 29. 30.**

See **Mahomedan Law— Sale by Guardian.**

See **Sale by Guardian.**

See **Review. 10.**

—— Alienation by Guardian of—Suit to set aside on—attaining Majority—Limitation.

See **Alienation by Guardian. 1.**

PROSONNO NATH *v.* AFZOLONESSA. **I. L. Rep. 4 Cal. 532.**

—— Appointment of Guardian to—Children of Deceased Member of Undivided Hindu Family.

See **Certificate of Administration to Minor's Estate.**

GURACHARYA *v.* SVAMIRAYACHARYA...**I. L. Rep. 3 Bom. 431.**

—— Appointment of Guardian to—after previous Refusal.

See **Act IX. of 1861, § 1.**

NEHALO *v.* NAWAL...**I. L. Rep. 1 All. 428.**

Digitized by Google

INFANT—*contd.*

—— Authority to adopt given by.

See **Hindu Law—Adoption. 10.**

JUMOONA BAMASOONDERI...**I. L. Rep. 1 Cal. 289; L. Rep. 3 I. A. 72.**

—— Custody of—Loss of Caste does not deprive Father of Right of.

See **Loss of Caste.**

KANAHI RAM *v.* BIDDYA RAM...**I. L. Rep. 1 All. 549.**

—— Custody of—Prostitution of Legal Guardian disqualifies for Right of.

See **Mahomedan Law—Guardian.**

ABASI *v.* DUNNE.....**I. L. Rep. 1 All. 598.**

—— Exposure of—with intent to abandon.

See **Conviction on several Charges. 3.**

EMPRESS *v.* BANNI...**I. L. Rep. 2 All. 349.**

—— Gift to, by Father or Guardian—Possession.

See **Mahomedan Law—Gift. 2.**

AMEEROONISSA *v.* ABEEDOONISSA... **L. Rep. 2 I. A. 87.**

—— To whom Guardian *ad Litem* appointed.

See **Majority Act IX. of 1875, § 3.**

SATTYA GHOSAL *v.* SUTTYANUND GHOSAL...**I. L. Rep. 1 Cal. 388.**

—— Liability of—for Debts incurred by Guardian in Ancestral Trade carried on for Benefit of.

See **Hindu Law—Ancestral Trade.**

JOYKISTO *v.* NITTYANUND.....**I. L. Rep. 3 Cal. 738.**

—— Mortgage by Guardian of—Certificated and Uncertificated Guardians—Powers.

See the cases under **Alienation by Guardian; Mahomedan Law—Sale by Guardian; Mortgage, 29, 30.—Sale by Guardian,** and **Review. 10.**

—— Sale of property to pay Debts of Deceased Father, when binding on.

See **Mahomedan Law—Infant.**

HAMIR SINGH *v.* MUSAMMAT ZAKIA...**I. L. Rep. 1 All. 57.**

INFANT—*contd.*

—— Sale by Guardian of—Certificated and Uncertificated Guardians—Powers.

See the cases under **Mahomedan Law—Sale by Guardian—Alienation by Guardian—Mortgage, 29, 30—Sale by Guardian,** and **Review. 10.**

—— Suit on behalf of—Certificate of Administration still necessary.

See **Bombay Minors Act XX. of 1864, § 2.**

MURLIDHAR *v.* SUPDU...**I. L. Rep. 3 Bom. 149.**

—— Unauthorized Alienation of Property of—by *de facto* Guardian.

See **Lien. 1**

KUVARJI *v.* MOTI...**I. L. Rep. 3 Bom. 234.**

See **Mortgage, 29, 30.**

ABHASEE BEGUM *v.* MAHARANEE RAJROOP KOONWAR...**I. L. Rep. 4 Cal. 33.**

DEBI DUTT SAHOO *v.* SUBODRA BIBEE.....**I. L. Rep. 2 Cal. 283.**

INFORMATION TO THE POLICE—Omission to give—by Agent or Owner of Land.

See **Criminal Procedure Code, Act X. of 1872, § 90. 1. 2.**

EMPRESS *v.* ACHIRAJ LALL...**I. L. Rep. 4 Cal. 603.**

EMPRESS *v.* SASHI B. CHUCKERBUTTY.....**Ibid. 623.**

INFRINGEMENT OF EXCLUSIVE RIGHT OF FISHING IN A PUBLIC RIVER.

See **Criminal Trespass. 3.**

EMPRESS *v.* CHARN NAYIAH...**I. L. Rep. 2 Cal. 354.**

INFRINGEMENT OF FERRY RIGHTS.

See **Ferry Rights.**

LUCHMESSUR SINGH *v.* LEELANAND SINGH.....**I. L. Rep. 4 Cal. 599.**

INFRINGEMENT OF PATENT—Limitation to Suit for an Account of Profits obtained by.

See **Limitation. 50.**

KINMOND *v.* JACKSON...**I. L. Rep. 3 Cal. 17.**

Digitized by Google

INFRINGEMENT OF PATENT—*contd.*

—— *Act XV. of 1859—Measure of Damages—Public or Actual User.*] In a suit under Act XV. of 1859, for the infringement of a patent, where the plaintiff has been in the habit of licensing the use of his own invention for a royalty, the loss of that royalty *held* to be the proper measure of damages.

Per Spankie, J.—By Act XV. of 1859, an invention is new if it shall not, before the time of applying for leave to file the specification, have been "publicly used" in India, &c., or "have been publicly known" by means of a publication, &c.

The meaning of "public use" is, that a man shall not by his own private invention which he keeps locked up in his own desk, or in his own breast, and never communicates, take away the right that another man has to a patent for the same invention. The prior use of an invention need not be general. It has been held that a single instance of such use would be sufficient, but it must be public, *i.e.*, a use *in* public, not necessarily *by* the public.

Where the defendant did not allege in his written statement that the invention was publicly used at certain places prior to the date of the petition for leave to file the specification, but was allowed to give evidence of such user:—

Held by *Spankie*, J., that the evidence was inadmissible, and that the plaintiff was not bound before trial to have called upon the defendant to supply the particulars as to such places. SHEEN *v.* JOHNSON. *Stuart*, C. J., and *Spankie*, J..... **I. L. Rep. 2 All. 368, 1879.**

INHERITANCE—Adopted Son, Right of—to Property inherited by Adoptive Mother from her Father.

See **Hindu Law — Inheritance—Adopted Son.**

SHAM KUAR *v.* GAYA DIN...**I. L. Rep. 1 All. 255.**

—— Among Ascetics.

See **Hindu Law — Inheritance — Ascetics.**

KHUGGENDER *v.* SHARUNGIR. **I. L. Rep. 4 Cal. 543.**

—— Of Brothers in Undivided Hindu Family—Brothers of Whole Blood exclude Brothers of Half Blood in Bengal.

INHERITANCE—*contd.*

See **Hindu Law — Inheritance — Brothers. 1. 2.**

RAJKISHORE *v.* GOBIND CHUNDER. **I. L. Rep. 1 Cal. 27; 24 W. Rep. 234; L. Rep. 4 I. A. 153, n.**

SHEO SOONDARY *v.* PIRTHEE SINGH.....**L. Rep. 4 I. A. 147.**

—— But do not exclude Children of Deceased Brother.

See **Hindu Law—Inheritance—Brothers. 3.**

DEBI PARSHAD *v.* THAKUR DIAL... **I. L. Rep. 1 All. 105.**

See **Hindu Law — Inheritance—Nephews.**

BHIMUL DOSS *v.* CHOONEE LALL... **I. L. Rep. 2 Cal. 379.**

—— Brother's Daughter's Son excluded by Great-Grandson of Grandfather of Deceased, or by Father's Brother's Grandson.

See **Hindu Law — Inheritance — Brother's Daughter's Son.**

JUGGUT NARRAIN SINGH *v.* COLLECTOR OF MANBHOOM...**I. L. Rep. 4 Cal. 413.**

See **Certificate to collect Debts. 1.**

OODOYCHURN MITTER.....**I. L. Rep. 4 Cal. 411.**

—— Of Daughters to Father—Absolute Estate in Bombay Presidency.

See **Hindu Law — Inheritance—Daughters. 1.**

HARIBHAT *v.* DAMODARBHAT...**I. L. Rep. 3 Bom. 171.**

Limited Estate under Mitakshara.

See **Hindu Law — Inheritance—Daughters. 4.**

CHOTAY LALL *v.* CHUNNOO LALL. **L. Rep. 6 I. A. 15; I. L. Rep. 4 Cal. 744.**

—— Of Daughters *inter se*—Childless Widowhood does not prevent Right of—by Survivorship.

See **Hindu Law — Inheritance — Daughters. 2.**

AUMIRTOLAL BOSE *v.* RAJONEEKANT MITTER...**L. Rep 2 I. A. 113.**

Digitized by Google

INHERITANCE—*contd.*

—— Of Daughters—Childless Widowed—Incompetent for—in Bengal.

See **Hindu Law — Inheritance—Daughters. 2.**

AUMIRTOLAL BOSE *v.* RAJONEEKANT MITTER ..**I. L. Rep. 2 All. 113.**

Secus in Benares, though Indigent.

See **Hindu Law — Inheritance—Daughters. 3.**

SRIMUTTI UMA DEVI *v.* GOKOOLANAND DAS...**L. Rep. 5 I. A. 40 ; I. L. Rep. 3 Cal. 587.**

—— Daughter's Sons—excluded from—to Maternal Grandfather's Estate by Daughter not disqualified.

See **Hindu Law — Inheritance — Daughter's Sons. 1. 2.**

AUMIRTOLAL BOSE *v.* RAJONEEKANT MITTER...**L. Rep. 2 I. A. 113.**

BAIJNATH *v.* MAHABIR...**I. L. Rep. 1 All. 608.**

—— Disqualification for.

See the Index heading **Disqualification to Inherit.**

—— Father's Brother's Grandson excludes Daughter's Son.

See **Certificate to collect Debts. 1.**

OODOYCHURN MITTER...**I. L. Rep. 4 Cal. 411.**

—— Father's Sister's Son excluded by Great-Grandson of Great-Great-Grandfather of Deceased.

See **Hindu Law — Inheritance—Father's Sister's Son.**

THAKOOR JEEBNATH SINGH *v.* THE COURT OF WARDS...**L. Rep. 2 I. A. 163.**

See also **Hindu Law—Inheritance—Brother's Daughter's Son.**

JUGGAT NARRAIN SINGH *v.* COLLECTOR OF MANBHOOM.....**I. L. Rep. 4 Cal. 413.**

And *see* **Certificate to collect Debts. 1.**

OODOYCHURN MITTER...**I. L. Rep. 4 Cal. 411.**

INHERITANCE—*contd.*

—— Female—Right of—to Shebaitship.

See **Hindu Law—Adoption. 2.**

JANOKEE DEBEA *v.* GOPAUL ACHARJEA...**I. L. Rep. 2 Cal. 365.**

—— Half-Brothers in Bengal excluded by Brothers of Whole Blood.

See **Hindu Law — Inheritance — Brothers. 1. 2.**

RAJKISHORE *v.* GOBIN CHUNDER... **I. L. Rep. 1 Cal. 27; 24 W. Rep. 234; L. Rep. 4 I. A. 153.**

SHEO SUNDARY *v.* PIRTHEE SINGH. **L. Rep. 4 I. A. 147.**

—— Half-Brother, separated, excluded by Full Sister.

See **Hindu Law — Inheritance — Sister. 1.**

SAKHARAM S. ADHIKARI *v.* SITABAI.....**I. L. Rep. 3 Bom. 353.**

—— Illegitimate Son of the three Regenerate Classes (Brahmans, Kshatriyas, Vaisyas) excluded from—in absence of Local Usage to contrary.

See **Hindu Law—Inheritance—Illegitimate Son. 2. 4. 5.**

NILMONEY SING DEO *v.* BANNESHUR...**I. L. Rep. 4 Cal. 91.**

RAHI *v.* GOVIND.....**I. L. Rep. 1 Bom. 97.**

NARAYAN *v.* LAVING...**I. L. Rep. 2 Bom. 140.**

—— Illegitimate Son of Sudra by Continuous Concubine—Half-Share with Legitimate Son—Whole Estate in absence of Legitimate Son, Daughter, or Daughter's Son.

See **Hindu Law—Inheritance—Illegitimate Son. 1. 2. 3. 4. 5.**

GOPAL *v.* HANMANT ..**I. L. Rep. 3 Bom. 273.**

NARAIN *v.* RAKHAL...**I. L. Rep. 1 Cal. 1.**

SARASUTI *v.* MANU...**I. L. Rep. 2 All. 134.**

RAHI *v.* GOVIND.....**I. L. Rep. 1 Bom. 97.**

NARAYAN *v.* LAVING...**I. L. Rep. 2 Bom. 140.**

Digitized by Google

INHERITANCE—*contd.*

—— Illegitimate Offspring of Adulterous Intercourse of Sudras or Gosavis excluded from.

See **Hindu Law—Inheritance—Illegitimate Son. 4. 5. 6.**

RAHI *v.* GOVIND.....**I. L. Rep. 1 Bom. 97.**

NARAYAN *v.* LAVING...**I. L. Rep. 2 Bom. 140.**

VIRARAMUTHI *v.* SINGARAVELU... **I. L. Rep. 1 Mad. 306.**

—— Impartible Zemindary—Family Custom.

See **Hindu Law—Inheritance—Primogeniture.**

CHOWDHRY CHINTAMAN SINGH *v.* MUSST. NOWLUKHO KONWARI. **L. Rep. 2 I. A. 263; I. L. Rep. 1 Cal. 153.**

—— Impartible Zemindary for which no Permanent Sunnud has been issued—Right of Government to nominate to.

See **Succession to Impartible Zemindary for which no Permanent Sunnud has been issued.**

SRI RAGUNADHA *v.* SRI BROZO KISHORO...**L. Rep. 3 I. A. 154; I. L. Rep. 1 Mad. 69.**

—— Impartible Zemindary — Succession of Widow to—as Separate Property.

See **Hindu Law — Separate Property.**

PERIASAMI *v.* PERIASAMI...**L. Rep. 5 I. A. 61; I. L. Rep. 1 Mad. 312.**

—— among Jains.

See **Jain Law. 2. 3.**

SHEO SINGH DEO *v.* MUSST. DAKHO...**L. Rep. 5 I. A. 87; I. L. Rep. 1 All. 688.**

CHOTAY LAL *v.* CHUNNOO LALL... **L. Rep. 6 I. A. 15; I. L. Rep. 4 Cal. 744.**

—— among Khojas—Widow of Childless Khoja excludes Sister.

See **Khojas. 1.**

RAHIMATBAI *v.* HIRBAI.....**I. L. Rep. 3 Bom. 34.**

INHERITANCE—*contd.*

—— Missing Person—Presumption of Death—Hindu and Mahomedan Law.

See **Evidence. 21.**

PERMESHAR RAI *v.* BISHESHAR SINGH...**I. L. Rep. 1 All. 53.**

—— Mother disqualified for—by Unchastity.

See **Hindu Law—Disqualification to Inherit. 5.**

RAMNATH *v.* DOORGA SUNDARI...**I. L. Rep. 4 Cal. 550.**

—— Mother — Estate of—limited as that of Widow.

See **Hindu Law — Inheritance — Mother.**

SAKHARAM *v.* SITABAI.....**I. L. Rep. 3 Bom. 353.**

—— Nephews—Undivided Family.

See **Hindu Law — Inheritance — Brothers. 3.**

DEBI PARSHAD *v.* THAKUR DIAL... **I. L. Rep. 1 All. 105.**

See **Hindu Law Inheritance — Nephews.**

BHIMAL DOSS *v.* CHOONEE LALL... **I. L. Rep. 2 Cal. 379.**

—— Primogeniture.

See **Hindu Law—Inheritance—Primogeniture.**

CHOWDHRY CHINTAMAN SINGH *v.* MUSST. NOWLUKHO KONWARI. **L. Rep. 2 I. A. 263; I. L. Rep. 1 Cal. 153.**

—— Relinquishment of Right of.

See **Hindu Law—Relinquishment of Share by Son.**

BALKRISHNA *v.* SAVITRIBAI...**I. L. Rep. 3 Bom. 54.**

—— Return—Widow's Right to—to Exclusion of *Fisc.*

See **Mahomedan Law — Inheritance—Return.**

MAHOMED ARSHAD CHOWDHRY *v.* SAJIDA BANNOO...**I. L. Rep. 3 Cal. 702.**

—— To Right of Occupancy.

See **Act XVIII. of 1873, § 9. 2.**

BHAGWANTI *v.* RUDR MAN TIWARI. **I. L. Rep. 2 All. 145.**

Digitized by Google

INHERITANCE—*contd.*

——among Saniasis.

See **Hindu Law—Inheritance—Saniasis.**

MADHO DAS *v.* KAMTA DAS....**I. L. Rep. 1 All. 539.**

—— Sister—Full Sister excludes Half-Brother or remote Separated Male Relative.

See **Hindu Law — Inheritance—Sisters. 1. 2.**

SAKHARAM *v.* SITABAI .....**I. L. Rep. 3 Bom. 353.**

DHONDU *v.* GANGABAI. **Ibid. 369.**

——*Stridhan*—Husband excluded by Brother, Mother, and Father, as to Property given after Marriage, by Father's Sister's Son.

See **Hindu Law — Inheritance—Stridhan.**

HURRYMOHUN *v.* SONATUN...**I. L. Rep. 1 Cal. 275.**

——*Stridhan*—Incontinence no Disqualification for—to.

See **Hindu Law—Disqualification to Inherit. 3.**

MUSST. GANGA JATI *v.* GHASITA... **I. L. Rep. 1 All. 46.**

—— Widow—of *Gotraja Sapinda.*

See **Hindu Law — Inheritance — Widow. 3.**

LALLUBHAI *v.* MANKUVARBAI...**I. L. Rep. 2 Bom. 388.**

—— Widow's Incontinence does not work Forfeiture of—once vested.

See **Hindu Law—Disqualification to Inherit. 4.**

BHAVANI *v.* MAHTAB KUAR...**I. L. Rep. 2 All. 171.**

See **Hindu Law — Inheritance — Widow. 1.**

NEHALO *v.* KISHEN LAL...**I. L. Rep. 2 All. 150.**

See **Hindu Law — Maintenance of Widow. 12.**

HONAMA *v.* TIMANBHAT.....**I. L. Rep. 1 Bom. 559.**

INHERITANCE—*contd.*

—— Widow— Joint Widows.

See **Hindu Law — Inheritance — Widows. 2.**

SRI GAJAPATTI NILAMANI *v.* SRI GAJAPATTI RADHAMANI. **L. Rep. 4 I. A. 212; I. L. Rep. 1 Mad. 290.**

INHERITED PROPERTY NOT STRIDHAN ACCORDING TO MITAKSHARA AND BENGAL LAW.

See **Hindu Law—Stridhan. 1. 2.**

JUGMOHUN *v.* SARODAMOYEE...**I. L. Rep. 3 Cal. 149.**

PHUKAR SINGH *v.* RANJIT SINGH: **I. L. Rep. 1 All. 661.**

See **Hindu Law — Inheritance — Daughters. 4.**

CHOTAY LALL *v.* CHUNNOO LALL... **L. Rep. 6 I. A. 15; I. L. Rep. 4 Cal. 744.**

—— As to Bombay Presidency.

See **Hindu Law — Inheritance — Daughters. 1.**

HARRIBHAT *v.* DAMODHARBHAT... **I. L. Rep. 3 Bom. 171.**

INJUNCTION—To Abate Public Nuisance.

See **Right to Sue. 1.**

SAKTU *v.* IBRAHIM.....**I. L. Rep. 2 Bom. 457.**

—— To Discontinue Nuisance — Breach— Jurisdiction of Court issuing—to try Person commiting Breach.

See **Criminal Procedure Code, Act X. of 1872, § 473. 1.**

REG. *v.* PARSAPA MAHADEVAPA...**I. L. Rep. 1 Bom. 339.**

—— To Restrain Celebration of Marriage with Person other than Plaintiff—Interim Injunction.

See infra. **1.**

—— To Restrain Decree-holder from executing Decree.

See infra, **2.**

Digitized by Google

INJUNCTION—*contd.*

—— To Restrain Intruder on Office of *Vatandar Joshi* from receiving Fees.

See **Disturbance of Office. 2.**

RAJA SHIVAPPA *v.* KRISHNABHAT. **I. L. Rep. 3 Bom. 323.**

—— To Restrain Exercise of Power of Sale in Mortgage.

See **Mortgage. 32.**

JAGJIVAN *v.* SHRIDHAR.....**I. L. Rep. 2 Bom. 252.**

—— To Restrain Publication of Libel.

See infra. **3.**

—— Mandatory.

See **Mandatory Injunction.**

JAMNADAS *v.* ATMARAM.....**I. L. Rep. 2 Bom. 133.**

—— Suit for—to Restrain Defendants from working Mines on their Land within certain distance from Plaintiffs' Boundary—Disputed Boundary—Suit for Land—Jurisdiction.

See **Suit for Land. 1.**

E. I. RY. CO. *v.* BENGAL COAL CO. **I. L. Rep. 1 Cal. 95.**

1. —— *Interim Injunction to restrain Defendant from celebrating the Marriage of her Daughter with a Person other than Plaintiff—Act VIII. of* 1859, §§ 92 *and* 93 — *Betrothal—Specific Performance.*] Sections 92 and 93 of Act VIII. of 1859 are inapplicable to a suit for specific performance of an agreement to give in marriage, and the Court will not grant an *interim* injunction to restrain the defendant from giving her daughter in marriage to another.

Per Glover, J.—The right of the petitioner to have an injunction *pendente lite* depends on the nature of the remedy which a Court would give in the suit; and if it could be shown that a decree for specific performance would necessarily follow proof of the petitioner's betrothal to the girl, an injunction might properly be granted, as without it the suit might, and probably would, be infructuous. But § 93 of Act VIII. of 1859 was never meant to apply to such a case. As a general rule, a decree for specific performance of a contract is only given where an award of damages would be an incomplete relief, and the breach of promise to marry or give in marriage is one to which a money penalty has, in England at least, always been considered adequate. The authorities quoted in support of the argument

INJUNCTION—*contd.*

that Hindu Law demands the carrying out of a marriage when certain ceremonies have been performed, did not seem to go further than to declare it usually wrong to break such engagements. A betrothal is not, according to Hindu law, an actual and complete marriage, nor such a contract as the Court will order specific performance of. A suit for specific performance of a contract to give in marriage will not lie; the remedy is an action for damages for breach of the contract. *In the matter of* GUNPUT NARAIN SINGH. *Glover* and *Mitter*, JJ.....**I. L. Rep. 1 Cal. 74, 1875.**

2. —— *To restrain Decree-holder from executing Decree—Court of Co-ordinate Jurisdiction—Erroneous Order of Substitution—Specific Relief Act I. of* 1877.] An injunction did not, under the law as it existed previous to the passing of the Specific Relief Act (I. of 1877), lie against a decree-holder, by assignment or otherwise, to restrain him from executing a decree granted him by a Court exercising co-ordinate jurisdiction with the Court in which the injunction was applied for on the ground that the proceedings by which the decree was obtained were altogether illegal.

The cases in which injunctions were granted by the Court of Chancery against proceedings in other Courts in England, proceed upon the assumption that the rights of the parties cannot be fully inquired into except in the Court of Chancery itself.

Under the Specific Relief Act no injunction to stay proceedings can be granted unless the Court in which the proceedings are to be stayed is subordinate to that in which the injunction is sought. DHURONIDHUR SEN *v.* THE AGRA BANK. *Jackson*, C.J. (Offg.), *Markby* and *Ainslie*, JJ...**I. L. Rep. 4 Cal. 380; 2 Cal. Rep. 283, 1878.**

But see this case on Review—Vol. 2, Cols. 676, 677.

3. —— *To restrain Publication of a Libel—Bombay Act I. of* 1873—Ultra Vires.] The Court will not restrain by injunction the publication of a libel, though distinctly affecting the complainants in respect of their trade or business.

Nor will the Court interfere by injunction at the suit of an individual in case of an assumption by an incorporated body of powers beyond those conferred upon it, except where such individual has been damaged by such excess of power in respect of his rights of ownership, or rights of commodity or easement.

Digitized by Google

INJUNCTION—*contd.*

There is no authority for the proposition that an individual is entitled to protection by way of injunction against the acts of a Corporation, though in excess of their powers, which affects that person's character and reputation, whether private, professional or commercial, which he would not have been entitled to, had the act complained of been committed by an individual defendant, on the ground that the act in question was one which the corporation had no power to do under the instrument of incorporation.

The Trustees of the Port of Bombay have, as much as any private individual, the power to record their decisions and opinions with regard to matters connected with the business they have under their Act, power to transact—whether such decisions or opinions are confined to statements of what they believe to be actual facts, or extend also to the giving of advice for the conduct of successors in office with regard to such business; and whether the expression of such decisions, opinions, or advice may or may not contain statements injurious to the character and reputation of others.

Where, therefore, the plaintiff sought for an injunction to restrain the Trustees of the Port of Bombay from publishing two resolutions alleged to reflect injuriously on his character and reputation, on the ground that it was not within the power conferred on the Trustees by Bombay Act I. of 1873 to discuss or pass resolutions, affecting his character, and that the publication of such resolutions was calculated injuriously to affect him in his commercial relations with the Government:—

Held, that the injunction could not be granted.

Held, also, that though the Courts, under certain circumstances, might have the power of so framing an order for an injunction as to produce the effect of cancelling the minutes of a resolution recorded in the books of a corporate body, yet that it could not order the Trustees of such a body to pass and record a resolution dictated by the Court. SHEPHERD *v.* THE TRUSTEES OF THE PORT OF BOMBAY. *Green*, J... **I. L. Rep. 1 Bom. 132, 1876.**

INSOLVENCY—Composition—Assignment by Debtor of Property in Trust for Creditors.

See **Arbitration. 2.**

KHETA MAL *v.* CHUNI LALL.....**I. L. Rep. 2 All. 173.**

INSOLVENCY—*contd.*

—— Jurisdiction in—of District Court of Akyab.

See **Jurisdiction. 9.**

In re ABDOOL HAMED...**I. L. Rep. 4 Cal. 94.**

—— Of Manager of Joint Ancestral Trade.

See **Hindu Law—Maintenance of Widow. 9.**

JOHURRA BIBI *v.* SREEGOPAL MISSER ..**I. L. Rep. 1 Cal. 470.**

—— Order and Disposition.

See **Insolvency. 3. 4. 5.**

—— Of Plaintiff—Objection as to—first taken on Second Appeal—allowed.

See **Appeal—Civil. 24.**

SADODIN *v.* SPIERS...**I. L. Rep. 3 Bom. 437.**

—— Trust Property Held by Insolvent.

See **Insolvency. 7.**

1. —— *Right to Sue.*] Where the plaintiff, who had taken the benefit of the Insolvent Debtors' Act, but had not obtained his discharge, sued to enforce certain rights in respect of an estate in certain lands created by a settlement made before he filed his petition in insolvency:—

Held, that any rights which the plaintiff had under the settlement vested, as soon as the Court made its order under § 7 of the Indian Insolvent Act, in the Official Assignee; and that a suit to enforce such rights could be maintained by the Official Assignee only.

Herbert v. Sayer (L. Rep. 4 Q. B. D. 208) and *Jameson & Co. v. The Brick and Stone Co.* (5 Q. B. 965) distinguished. Those cases do not furnish any authority for holding that any insolvent may bring a suit to enforce the terms of a settlement regarding landed property, made before he files his petition in insolvency. SADODIN *v.* SPIERS. *Melvill* and *Kemball*, JJ...**I. L. Rep. 3 Bom. 437, 1879.**

S. C. under **Appeal—Civil. 25.**

2. —— *Right of Official Assignee—Sale of Lands for Arrears of "Tirvai" (Rent).*] In a suit to recover certain lands which the plaintiff had bought at an auction sale held by the revenue authorities for arrears of "tirvai" (rent), due by the defendant, it appeared that the defendant had taken the benefit of the Insolvent Act, and included in his schedule the amount of the arrears of "tirvai" for which the lands were sold, as an admitted debt:—

Digitized by Google

INSOLVENCY—*contd.*

Held, that no interest in the property in question passed to the Official Assignee by the vesting order. The interest of the *patta*-holder is one dependent on his payment of rent, and if he does not pay, his right to hold ceases, and becomes saleable, for whatever it is worth, for arrears. It is a case of a contract of letting; and the Official Assignee must have expressed his intention to take it, and must have taken it *cum onere*, otherwise he acquired no right or interest in the land. The Official Assignee not having elected to take the contract, the defendant could not set up the *jus tertii* of the Assignee. CHINNA SUBBARAYA MUDALI *v.* KANDASVAMI REDDI. *Holloway* and *Innes*, JJ.....**I. L. Rep. 1 Mad. 59, 1876**

3. —— *Indian Insolvent Act* 11 *and* 12 *Vict.*, *C.* 21, § 23—*Order and Disposition—True Owner.*] *N.*, an original allottee of shares in the *A.* Company, assigned them for value to the plaintiff. No transfer was ever executed, and no notice of the assignment was given to the Company, which subsequently went into liquidation. *N.* became insolvent and filed his petition. The plaintiff sued the liquidators of the *A.* Company to recover the amount due in respect of the five shares in the first distribution of assets.

Held, that at the time of *N.*'s insolvency the plaintiff was the real owner of the shares in question, within the meaning of § 23 of the Indian Insolvent Act, and as he had omitted to give the Company any notice of the assignment to him, and had, in fact, no transfer or assignment at all executed in his own favour which the Company under their Articles were bound to recognize or act upon, he had consented that the shares in question should be in the "order or disposition" of *N.*, and that therefore the shares, with the consequent right to receive any distribution of assets in respect of them, vested in the Official Assignee on *N.*'s insolvency.

Semble, though in a certain sense one who is under an obligation to convey property to another is, in a Court of Equity, a trustee of it for the latter, yet this principle does not apply in cases where the reputed ownership clause of the Insolvent Acts is in question. BHAVAN MULJI *v.* KAVASJI J. JASAWALA. *Westropp*, C.J., and *Green*, J.....**I. L. Rep. 2 Bom. 542, 1878.**

4. —— 11 *and* 12 *Vict.*, *C.* 21, § 23—*Order and Disposition.*] On the night previous to *B.*'s being adjudicated an insolvent, about 10 P.M., the

INSOLVENCY—*contd.*

firm of *R. B. D.*, at their place of business, promised to give *B.* a loan of Rs. 5,000 if he would the next morning deliver to them goods to that amount, and would in the mean time satisfy them that he had sufficient goods in his godown, and allow the firm of *R. B. D.* to put their lock on the door of the godown, to secure the goods until they had received the value of the loan. *B.* then took the gomastah of the firm of *R. B. D.* to his godown, let him see that it contained goods worth more than Rs. 5,000, and allowed him to put a lock on the door, *B.* at the same time replacing his own locks. The gomastah and *B.* then returned to the office of *R. B. D.*, where Rs. 5,000 were paid to *B.*, who promised to deliver the next morning Rs. 5,000 worth of goods out of the godown which had been locked up. Having received the money, *B.* absconded from Calcutta that night, and next day was adjudicated insolvent :—

Held, that the goods in the godown were not in the order and disposition of *B.* within the meaning of § 23 of the Insolvent Act.

In the matter of BUNGSEEDHUR KHETTRY. *Macpherson*, J...**I. L. Rep. 2 Cal. 359, 1877.**

5. —— 11 *and* 12 *Vict.*, *C.* 21, § 23—*Order and Disposition—Goods pledged by Insolvent and redelivered to him on Commission Sale.*] *M.*, who carried on the business of a watchmaker in Calcutta, borrowed from *D. M.* Rs. 6,000, for which he gave a promissory note, and, as collateral security, pledged certain articles consisting of clocks, &c., with *D. M.* The articles remained in *D. M.*'s custody for three or four months. *D. M.* then re-delivered them to *M.* for sale on commission, the proceeds to be applied in liquidation of the debt, and obtained a receipt for them from *M.*, who subsequently sold some of them on the above terms. On the 2nd of May 1877, *M.* filed his petition in the Insolvent Court, and the Official Assignee, among other things, took possession of the articles remaining unsold, and refused to deliver them to *D. M.* On an application for an order directing their return, it was alleged that it was the custom for European jewellers in Calcutta to receive articles on commission sale, and it was contended that such receipt did not divest the true owner of possession :—

Held, that the articles were rightly vested in the Official Assignee. On the facts, the insolvent was the true owner of the articles. At common law, the interest of the pledgee of

Digitized by Google

INSOLVENCY—*contd.*

goods ceased by his ceasing to have possession of them by his own consent, and the Contract Act does not alter this, but describes a pledge as a bailment: when the bailment, therefore, comes to an end, the pledge does so likewise. The articles, therefore, in the insolvent's hands were discharged of *D. M.*'s lien, and subject only to the terms of the receipt, which only amounted to an agreement to sell the goods and apply the proceeds in payment of his debt, for breach of which *D. M.* could prove and recover a dividend. Even if *D. M.*'s interest did not cease, the goods were in the disposition of the insolvent, there being nothing to show in what way *D. M.* took possession of the articles, or that the change of possession or ownership was accompanied by publicity or notoriety. No amount of evidence would satisfy the Court that there was a practice or custom of purchasing goods from a retail dealer and leaving them with him for commission sale; and no arrangement by which in substance and effect one creditor secures a preference, as to the proceeds of certain goods, over the others, by an arrangement which leaves the goods in the manual power of the bankrupt, can be upheld. *In re* MURRAY. *Kennedy*, J...**I. L. Rep. 3 Cal. 58, 1877.**

6.——11 *and* 12 *Vict.*, *C.* 21, § 26—*Question of Disputed Title.*] Where an order had been made, under § 26 of the Insolvent Debtors' Act, calling on a certain person to show cause why she should not hand over to the Official Assignee money which it was alleged that the insolvent had paid her shortly before his insolvency, under circumstances which might make the transaction void as against creditors:—*Held* in the Court below, that the transaction was a gift, and, under the circumstances, void as against creditors within the Stat. 13 Eliz., C. 5. *Held* also, that the word 'property' in § 26 of the Insolvent Act includes money.

Held on appeal, that the matter was not one which could properly be dealt with under that section, as it involved difficult questions of title. *In the matter of* UMBICA CHUNDUN BISWAS. *Garth*, C.J., and *Markby*, J...**I. L. Rep. 3 Cal. 434; 1 Cal. Rep. 561, 1878.**

7.—— 11 *and* 12 *Vict.*, *C.* 21, § 40—*Trust Property* — Cestui-que-Trust *Creditor* — *Proof.*] As the Indian Insolvent Act, by virtue of the terms of § 40, incorporates all existing and future enactments passed in England for the purpose of determining what debts may be proved; and as by § 15 of the English Act of 1869, property held by the bankrupt in trust for others is not the property of the bankrupt divisible among his creditors, such property cannot be regarded as having vested in the Official Assignee, and a *cestui-que-trust* creditor is not entitled to come in and prove; because what is being administered in insolvency is the insolvent's estate, of which property of this nature does not form part. *In the matter of the Petition and Schedule of* VARDALA CHARRI. *Innes*, J.....**I. L. Rep. 2 Mad. 15, 1877.**

INSPECTION—Affidavit as to Documents—Written Statement mentioning other Documents.

See **Practice—Civil. 3.**

KENNELLY *v.* WYMAN...**I. L. Rep. 1 Cal. 178.**

—— Partnership Books—All Partners not Parties to Suit.

See infra. **1.**

—— Privileged Communications—Discretion to refuse.

See infra. **2.**

—— Sealing up Parts—Practice.

See infra. **3.**

1. —— *Production of Documents—Partnership.*] The plaintiff, alleging that he had been a partner with the defendant and others in the firm of I. K. & Co.; and that on the dissolution of that firm the amount then standing to his credit in the partnership book had been carried to his credit in the books of a new firm, in which he and the defendant only were partners, applied for an order on the defendant to produce, for the plaintiff's inspection, the books of I. K. & Co. The defendant resisted this application, on the ground that the other partners in the firm of I. K.& Co. had an equal interest with him in the books, and were not parties to the suit, nor shown to have consented to the production of the books.

Held, that the Court was not fettered by the strict rule which prevailed in the Court of Chancery, and prevented the production of books and papers from being compelled, where persons not before the Court were jointly interested in them

Digitized by Google

INSPECTION—*contd.*

with the plaintiff, but would be governed by all the circumstances of each case in determining whether the order for production would be just; and that, in the present case, the other members of the firm of I. K. & Co. were sufficiently represented by the defendant, and that the books should be produced. HAJI JAKARIA *v* HAJI CASIM. *Sargent*, J ..**I. L. Rep. 1 Bom. 496, 1876.**

2. —— *Civil Procedure Code, Act X. of* 1877, § 130—*Privileged Communications.*] Under § 130 of the Civil Procedure Code (Act X. of 1877), a Judge has no discretion as to refusing to allow inspection of documents in possession of a party to the suit, relating to the matter in question, provided they are not privileged.

Confidental communications between principals and their agents relating to matters in a suit are not privileged. Communications to be privileged must be confidental communications with a professional adviser.

In a suit for an injunction to restrain the defendant from using certain trade marks:—*Held*, that telegrams and letters between the plaintiff's firm in London and their managing agent in Bombay, relating to the subject-matter of the suit, were not privileged. WALLACE & Co. *v.* JEFFERSON. *Sargent* and *Bayley*, JJ.....**I. L. Rep. 2 Bom. 453, 1878.**

3. —— *Practice — Sealing up Parts.*] Where the defendant, stating that he was a banker and commission agent, and as such had large mercantile and monetary transactions with different persons, all of which transactions were entered in the books and documents produced by him for the plaintiff's inspection, wished to be at liberty to seal up such parts of the books and documents as did not relate to the matters in question between him and the plaintiff, who however stated that it was absolutely necessary for him to inspect the whole of the books; *Pontifex*, J., ordered that an officer of the Court should be appointed before whom the plaintiff should, in confidence, lay his particulars as to why he wanted to inspect any other part of the books, such officer to report, after looking at the books, whether he was able to say whether and in what way any part which the defendant wished to seal up was material to the plaintiff's case. HEERALALL RUKHT *v.* RAM SURUN LAL.. **I. L. Rep. 4 Cal. 835, 1879.**

INSTALMENTS—Bond—Whole to fall due on Default of Payment of Instalment—Limitation.

See **Limitation. 30.**

GUMMA *v.* BHIKU.....**I. L. Rep. 1 Bom. 125.**

—— Bond Payable by.

See **Limitation. 24.**

BALL *v.* STOWELL...**I. L. Rep. 2 All. 322.**

—— Decree payable by—Discretion to make.

See the cases under **Decree payable by Instalments.**

—— Decree payable by—Limitation for Execution of.

See **Limitation, 71. 71a. 72.**

—— Decree payable by—in Suit on Bond charging Immoveable Property.

See **Civil Procedure Code, Act X. of 1877, § 210.**

HURDEO DAS *v.* HUKAM SINGH...**I. L. Rep. 2 All. 320.**

—— Decree payable by—Suit on—Limitation.

See **Limitation. 62.**

SAKHARAM *v.* GANESH.....**I. L. Rep. 3 Bom. 193.**

—— Oral Agreement to pay Debt by—Limitation.

See **Limitation. 93.**

KOYLASH CHUNDER *v.* BOYKOONTA NATH.....**I. L. Rep. 3 Cal. 619.**

—— Promissory Note payable by.

See **Act V. of 1866.**

REMFREY *v.* SHILLINGFORD.. **I. L. Rep. 1 Cal. 130.**

See **Limitation. 30.**

INSTRUMENT OF TRANSFER—Stamp.

See **Stamp. 4.**

EMPRESS *v.* DWARKANATH...**I. L. Rep. 2 Cal. 399.**

INSUFFICIENTLY STAMPED DOCUMENT—Admissibility of—cannot be questioned in Appeal.

See **Appeal—Civil. 20.**

KHOOB LALL *v.* JUNGLE SINGH... **I. L. Rep. 3 Cal. 787.**

See **Error not affecting the Merits. 1.**

AFZUL-UN-NISSA *v.* TEJ BAN ..**I. L. Rep. 1 All. 725.**

Digitized by Google

INSUFFICIENTLY STAMPED HUNDI—Admissibility of—in Evidence, on Payment of Penalty.

See **Stamp. 3.**

MOTHOORA MOHUN *v.* PEARY MOHUN...**I. L. Rep. 4 Cal. 259.**

INSURANCE—*Marine Insurance—Construction of Policy.*] In a policy of insurance, effected in Bombay on goods shipped from Calcutta to Jeddah, two clauses were inserted in writing, the rest of the policy being in the ordinary English form. The first of these clauses was written in the body of the policy, in English, and was as follows:—"Warranted free of particular average, unless stranded, sunk, or burnt." The second clause was written on the margin of the policy in Gujarati to the following effect:—"Insurance upon the goods to be without damage. The loss arising from damage is to be on the head of the owner of the goods."

Held, that the underwriters of such a policy are liable to the insurer for a particular average loss where the vessel, in which the insured goods are shipped, is stranded, sunk, or burnt. HAJI ISMAIL HAJI SEEDICK *v.* SHAMJI POONJANI. *Westropp*, C.J., and *Sargent*, J.....**I. L. Rep. 2 Bom. 550, 1878.**

INTENTION TO EVADE STAMP DUTY.

See **Stamp. 4.**

EMPRESS *v.* DWARKANATH...**I. L. Rep. 2 Cal. 399.**

INTENTION AS TO JOINT OR SEVERAL OWNERSHIP.

See **Hindu Law—Partition. 6. 9. 10. 11. 12.**

AMBIKA DAT *v.* SUKHMANI KUAR. **I. L. Rep. 1 All. 437.**

RANJEET SINGH *v.* KOER GUJRAJ SINGH...**L. Rep. 1 I. A. 9.**

BABOO DOORGA PERSAD *v.* MUSST. KUNDUN KOOWAR...**Ibid. 55.**

RAGHUBANAND DOSS *v.* SADHU CHURN DOSS...**I. L. Rep. 4 Cal. 425.**

JOY NARAIN GIRI *v.* GIRISH CHUNDER MYTI...**I. L. Rep. 4 Cal. 434; I. L. Rep. 5 I. A. 228.**

INTEREST—After Due Date of Bond containing Agreement to pay—up to Due Date.

See **Interest. 1. 3. 6.**

—— On Arrears of Rent at Enhanced Rate.

See **Interest. 8.**

—— Beng. Reg. XV. of 1793, § 6.

See **Interest. 2.**

—— Consideration of—in computing Value of Interest created in Immoveable Property, for Registration purposes.

See **Registration 8. 16. 17. 18. 19. 20.**

NANA *v.* ANANT...**I. L. Rep. 2 Bom. 353.**

NARSAYA CHETTI *v.* GURUVAPA CHETTI...**I. L. Rep. 1 Mad. 378.**

RAM DOOLARY KOOER *v.* THACO ROY...**I. L. Rep. 4 Cal. 61.**

RAJPATI SINGH *v.* RAM SUKHI KUAR...**I. L. Rep. 2 All. 40.**

AHMAD BAKSH *v.* GOBINDI...**Ibid. 216.**

DARSHAN SINGH *v.* HANMANTA... **I. L. Rep. 1 All. 274.**

—— On Costs.

See **Attorney and Client. 2.**

MONOHUR *v.* RAMNAUTH...**I. L. Rep. 3 Cal. 473.**

See **Interest. 9. 10.**

—— On Costs paid under Decree subsequently reversed.

See **Refund of Costs paid under Decree subsequently reversed.**

DORAB ALLY KHAN *v.* ABDOOL AZEEZ...**I. L. Rep. 4 Cal. 229.**

—— *Dim-dupat*—Application of Rule of—to Mortgages.

See **Assignment of Mortgage.**

GANPAT PANDURANG *v.* ADARJI DADABHAI.....**I. L. Rep. 3 Bom. 312.**

See **Hindu Law—Interest. 3.**

RAMCHANDRA *v.* BHIMRAV...**I. L. Rep. 1 Bom. 577.**

Digitized by Google

INTEREST—*contd.*

—— *Dam-dupat*—Rule of—not applicable to Decrees.

See **Hindu Law—Interest. 2.**

BALKRISHNA *v.* GOPAL.....**I. L. Rep. 1 Bom. 73.**

—— *Dam-dupat*—Rule of—not applicable when Defendant not a Hindu.

See **Hindu Law—Interest. 1.**

NANCHAND *v.* BAPU...**I. L. Rep. 3 Bom. 131.**

—— *Dam-dupat*—Rule of—not applicable to Suits in Bengal Mofussil.

See **Interest. 4.**

—— On Decree.

See **Interest. 11.**

—— On Decree—Rule of *Dam-dupat* inapplicable to.

See **Hindu Law—Interest. 2.**

BALKRISHNA *v.* GOPAL.....**I. L. Rep. 1 Bom. 73.**

—— Deducted in Advance from Loan.

See **Unconscionable Bargain. 2.**

MACKINTOSH *v.* WINGROVE...**I. L. Rep. 4 Cal. 137.**

—— Discretion to allow—from Date of Suit at lower Rate than Contract Rate.

See **Interest. 7.**

—— Exorbitant.

See **Unconscionable Bargain. 2.**

MACKINTOSH *v.* WINGROVE...**I. L. Rep. 4 Cal. 137.**

—— On Mesne Profits.

See **Execution of Decree. 20.**

HURRODURGA *v.* SHARRAT SOONDERY.....**I. L. 4 Rep. Cal. 674.**

See **Interest. 12.**

—— Mortgage—Second Mortgagee dispossessed by First Mortgagee—First Mortgagee subsequently paid off—Re-entry by Mortgagor—Suit by Second Mortgagee.

See **Dispossession of Second by First Mortgagee.**

NARAIN SINGH *v.* SHIMBHAO SINGH. **L. Rep. 4 I. A. 15.**

INTEREST—*contd.*

—— Not provided for in Decree.

See **Mesne Profits. 1.**

SADASIVA PILLAI *v.* RAMALINGA PILLAI..... **L. Rep. 2 I. A. 219.**

See **Interest. 11.**

—— Paid in advance—Discharge of Surety.

See **Principal and Surety. 2.**

PROTAB CHUNDER *v.* GOUR CHUNDER...**I. L. Rep. 4 Cal. 132.**

—— In Partition Suit.

See **Hindu Law—Partition. 1.**

LAKSHMAN *v.* RAMCHANDRA ... **I. L. Rep. 1 Bom. 561.**

—— Payment of—as such—Revival of Right to sue.

See **Limitation. 45. 46. 47.**

VALIA TAMBURATHI *v.* VIRA RAYAN...**I. L. Rep. 1 Mad. 228.**

TEGARAYA *v.* MARIAPPA.....**Ibid. 264.**

HANMANTLAL *v.* RAMABHAI...**I. L. Rep. 3 Bom. 198.**

—— Principal and Surety—Giving Time to Principal—Execution against Surety.

See **Principal and Surety. 3.**

RAMANUND *v.* CHOWDHRY SOONDER...**I. L. Rep. 4 Cal. 331.**

—— Promissory Note—Stipulation to pay High Rate of—on Default in Payment of Note—Penalty.

See **Contract. 13.**

MACKINTOSH *v.* HURST.....**I. L. Rep. 2 Cal. 202.**

—— Subsequent to Date of Order for Winding up Company.

See **Power of Directors to bind Company by Bill of Exchange.**

THE NEW FLEMING S. & W. CO. (LIMITED).....**I. L. Rep. 3. Bom. 439.**

—— In Suit to recover Title Deeds.

See **Interest. 5.**

—— Usurious Rate of—granted by Decree.

See **Hindu Law—Undivided Family. 7.**

LUCHMI DAI KOORI *v.* ASMAN SING...**I. L. Rep. 2 Cal. 213.**

Digitized by Google

INTEREST—*contd.*

1. —— *Mortgage Bond—Interest after Due Date—Rate of.*] In a suit to recover the principal and interest due on a mortgage bond given for the payment of the principal money with interest at a stipulated rate, up to a day specified, the Court may, in its discretion, award interest on the principal sum from such due date at such rate as it thinks fit, and is not bound to award such interest at the rate stipulated for in the bond.

The principle laid down in *Cook* v. *Fowler* (L. Rep. 7 H. L. 27) followed. DEEN DOYAL LALL v. HET NARAIN SINGH. *Kemp* and *Birch*, JJ.....**I. L. Rep. 2 Cal. 41, 1876.**

See infra. **3.**

2. —— *Reg. XV. of* 1783, § 6—*Reg. XVII. of* 1806, §§ 2 *and* 3.] By § 6 of Reg. XV. of 1793 interest which has accumulated on a debt must not be decreed to a greater sum than the amount of the principal.

This section was extended to the province of Benares by Reg. XVII. of 1806, § 2, and came into force on the 1st of January 1807, and governs the decisions of suits instituted after that date, though the cause of action may have arisen prior to that date.

There is nothing in § 3 of Reg. XVII. of 1806 inconsistent with its application, inasmuch as that section does no more than declare the rate at which interest is to be decreed in cases where the cause of action has arisen before a certain period; § 3, Reg. XVII. of 1806 refers to rates of interest; and § 6, Reg. XV. of 1793 to *accumulations* of interest irrespective of rates. The two sections should be read together and so applied. RAJA BARDA KANT RAI v. BHAGWAN DAS. *Spankie* and *Oldfield*, JJ...**I. L. Rep. 1 All. 344, 1877.**

S. C. under **Mortgage. 35.**

3. —— *Bond—Rate of Interest—Excessive Interest—Interest after Due Date—Limitation.*] The defendant gave the plaintiff a bond, dated the 8th of January 1872, to secure the repayment of Rs. 1,000 made up of a former debt and an advance made on the date of the bond, with interest at 21 per cent. per annum, which contained the following terms:—"I therefore execute this bond in respect of the sum borrowed at present and that formerly due by me, and agree and covenant that, having paid the entire aforesaid sum within two years with interest at Rs. 1-12 per cent. per mensem, I shall take back the bond;

INTEREST—*contd.*

that in case of default the creditor shall be at liberty to recover the whole amount, including principal and interest, by instituting a suit, or in any way he pleases, from my person and property, both moveable and immoveable; that until payment of the whole debt, including principal and interest, I hypothecate my four-anna share in Mauza Kharkapur."

Default was made at the end of the two years from the date of the bond, but the plaintiff did not institute a suit until the 11th of May 1877, upwards of three years after the default, when he sued to recover the sum of Rs. 1,913-11-0, principal and interest due under the bond:—

Held, that there was an express contract for the payment of interest after the expiration of the term of two years at the rate of 21 per cent. per annum, and that such rate was not excessive and was recoverable by the plaintiff.

Per Stuart, C.J.—If the interest had been excessive, the delay of the plaintiff in instituting his suit might possibly be justly attributed to his laches, and fairly considered to have the effect of modifying his claim. But in the present case such a consideration ought not to prevent the Court from construing the bond as a contract to be applied according to its terms, according to which the plaintiff was not bound to proceed to recover immediately upon default, but might do so at any time within the period of limitation, which, in such a case as the present, would be 12 years from the time when the money became due.

Per Spankie, J.—In the absence of a defined rate of interest to be paid after the period of a bond has expired, the suggestion of an implied contract to pay at the same rate that the obligor was to pay during the term of the bond could not be allowed. The question then would be, what would be a reasonable rate of interest to be allowed? The ordinary rule would appear to be that the creditor is entitled to the interest payable during the term of a bond, this amount being regarded as a fair measure of the rate to be allowed as a penalty for the breach of contract, provided the original interest claimed is not excessive. BALDEO PANDAY v. GOKAL RAI. *Stuart*, C.J., and *Spankie*, J...**I. L. Rep. 1 All. 603, 1878.**

See supra. **1.**

4. —— *Hindu Law*—Dam-dupat—*Suit in Bengal Mofussil—Act VI. of* 1871, § 24—*Compound Interest.*] Suit to recover Rs. 14,320

Digitized by Google

INTEREST—*contd.*

alleged to be due on a mortgage bond by which the defendant agreed to pay interest at the rate of Rs. 1-8 per mensem up to the realization of the principal sum, to repay the principal and interest on or before a certain date; that the interest should be paid half-yearly on certain dates; and that in case of default in the said payment, the unpaid interest was to be added to and considered principal, and was to carry interest at the same rate as the principal. The defendant having made default, the plaintiffs brought this suit for the above sum, of which Rs. 5,000 was claimed as principal, and the balance as interest.

Held, 1st, that the provisions of § 24 of Act VI. of 1871 were applicable to the case. By that section, the rules of Mahomedan and Hindu Law are to be administered to parties Mahomedan and Hindu respectively, only in matters of succession, inheritance, marriage, or caste, or any religious usage or institution. The rule, therefore, of Hindu law that interest in excess of principal cannot be recovered at any one time, does not apply to suits brought in the Mofussil of the Bengal Presidency; and that there was nothing to prevent the Court from awarding the amount of interest which was in accordance with the contract between the parties, there being no equitable ground on which the Court could interfere.

Held, also, that according to the terms of the bond there was to be a payment of interest in two instalments, *viz.*, half-yearly and yearly, including not only the particular year which was to elapse before the amount was due, but each year until the whole sum was recovered. DEEN DOYAL PORAMANICK *v.* KYLAS CHUNDER PAL CHOWDHRY. *Jackson* and *McDonnell*, JJ...**I. L. Rep. 1 Cal. 92, 1875.**

5. —— *Suit to recover Title Deeds.*] In a suit to recover title deeds and other property, the defendant claimed a certain sum as due to him, and in the plaint the plaintiff offered to pay the defendant all that was due up to that date, provided the deeds and property were given up. The defendant, however, claimed a right to hold them under an adverse title:—*Held*, that the defendant was only entitled to interest up to the date of the plaint, and not up to the date when the money was actually paid. JUGGONATH DOSS *v.* BRIJNATH DOSS. *Garth*, C.J., and *Markby*, J.. **I. L. Rep. 4 Cal. 322; 3 Cal. Rep. 375, 1878.**

6. —— *Excessive Interest—Contract to pay down to Day fixed—Subsequent Interest.*] Upon a contract to pay on a certain day money borrowed with interest at a certain rate down to that day, a farther contract for the continuance of the same rate of interest after that day until actual payment is not to be implied. When, therefore, the agreed rate of interest is excessive and extraordinary, the Court will reduce the rate to a reasonable amount...NANCHAND HANSRAJ *v.* BAPUSAHEB RUSTUMBHAI. *Melvill* and *Kemball*, JJ.....**I. L. Rep. 3 Bom. 131, 1878.**

S. C. under **Hindu Law — Interest. 1.**

7. —— *Act VIII. of* 1859, § 194—*Mortgage Instalments—Costs.*] In a suit brought to enforce a mortgage, in the exercise of the discretion given by § 194 of Act VIII. of 1859, the Court of first instance gave the plaintiff a decree making the amount awarded payable by instalments, but gave no interest after the institution of the suit. The District Court awarded interest from the institution of the suit at 6 per cent. per annum, the rate contracted for in the mortgage being 24 per cent. per annum:—

Held, that though the stipulated rate of interest was properly awardable, it was not illegal, or beyond the competence of the Court below, to award, in the exercise of its discretion, a rate of interest, from the institution of the suit, lower than that stipulated for, and with the exercise of such discretion the High Court refused to interfere. CARVALHO *v.* NURBIBI. *West* and *Pinhey*, JJ.....**I. L. Rep. 3 Bom. 202, 1879.**

S. C. under **Costs. 1**, and **Decree payable by Instalment. 2.**

8. —— *Arrears of Rent at Enhanced Rate.*] In a suit in which a decree is given for arrears of rent at an enhanced rate, interest is to be allowed not only from the date of the decree, but from the time the rent became due. The non-payment of the rent at the enhanced rate constitutes the cause of action, or, in other words, an arrear of rent liable for interest does not depend upon the date of decree, but upon the date when it became due. When a tenant is called on by notice to pay an enhanced rate of rent, he can either take the initiative and complain of excessive demand of rent, or contest his liability in answer to a suit; but whichever course he adopts, and whatever the result of his contention, the rent adjudged to be due is none the less an arrear if not paid when due. The amount of

Digitized by Google

INTEREST—*contd.*

rent is fixed by the notice, and if the tenant neither pays that amount at the appointed time, nor succeeds in showing that it is an unjust demand, he is liable for the consequences of his failure to pay in due time, *viz.* for interest. KHAJAH ASHANOOLLAH *v.* KAJEE AFTABOODDEEN. *Mitter* and *Maclean*, JJ.....**I. L. Rep. 4 Cal. 594; 3 Cal. Rep. 382, 1878.**

9. —— *On Costs — Execution of Decree.*] Where the order of the Judicial Committee of the Privy Council is silent as to interest upon the costs decreed, the Judge of the Indian Court which has to execute the decree has no power to direct payment of those costs with interest.

The existing practice of the Indian Courts, not to give in execution interest on costs unless specially decreed, or unless submission is made by the parties to the discretion of the Court, approved. FORESTER *v.* THE SECRETARY OF STATE FOR INDIA IN COUNCIL...**L. Rep. 4 I. A. 137, 1877; I. L. Rep. 3 Cal. 161.**

10. —— *On Costs — Execution of Decree.*] Where a decree gives interest on the principal sum recovered only, and is silent as to interest on costs, the successful party is not entitled to such interest in execution. MAHTAB CHUNDER BAHADOOR *v.* RAM LALL MOOKERJEE. *Markby* and *Mitter*, JJ...**I. L. Rep. 3 Cal. 351, 1877.**

11. —— *On Decree — Execution — Separate Suit.*] Interest on a decree cannot be levied in execution where the decree is silent as to subsequent interest on the amount decreed, but may be recovered by a fresh action instituted for that purpose. *Pillai* v. *Pillai* (L. Rep. 2 I. A. 219) approved. SETH GOKULDAS GOPALDAS *v.* MURLI. **L. Rep. 5 I. A. 78; I. L. Rep. 3 Cal. 602; 2 Cal. Rep. 156.**

S. C. under **Contract. 5.**

12. —— *Act XXXII. of* 1839, § 1.] Interest on mesne profits may be awarded as of course from the date of the suit in a decree.

Although such interest may be awarded from a date prior to the suit, their Lordships, under the circumstances of this case, including an unexplained delay in prosecuting the appeal, directed that the interest should run only from the date of the decree. HURROPERSAUD ROY CHOWDHRY *v.* SHAMAPERSAUD ROY CHOWDHRY. **L. Rep. 5 I. A. 31, 1878; I. L. Rep. 3 Cal. 654; 1 Cal. Rep. 499.**

INTEREST IN IMMOVEABLE PROPERTY.

See **Limitation. 31.**

JUNESWAR *v.* MAHABEER SINGH... **L. Rep. 3 I. A. 1; I. L. Rep. 1 Cal. 163.**

—— Decree charging Lands.

See **Sale in Execution of Decree. 7.**

MUSAMAT BHAWANI KUAR *v.* GULAB RAI...**I. L. Rep. 1 All. 348.**

—— *Jalkar.*

See **Jalkar.**

PARBUTTY NATH *v.* MUDHO PAROE. **I. L. Rep. 3 Cal. 276.**

—— Right to Worship of Idol is not an.

See **Right to Worhip of Idol.**

EHSAN CHUNDER *v.* MONMOHINI... **I. L. Rep. 4 Cal. 683.**

—— *Toda Garas Hak* payable by Inamdar from Rents of Village.

See **Toda Garas Hak.**

MAHARANA FATTEHSANGJI *v.* DESAI KALIANRAI ... **L. Rep. 1 I. A. 34.**

INTEREST CREATED IN IMMOVEABLE PROPERTY, COMPUTATION OF VALUE OF, FOR REGISTRATION PURPOSES — Present Value of Interest, and Amount of Consideration stated in Document, irrespective of Future Profits or Interest, Measure of Necessity to register.

See **Registration. 1. 7. 8. 9. 16. 17. 18. 20.**

KARAN SINGH *v.* RAM LALL.....**I. L. Rep. 2 All. 96.**

SATVA *v.* VISRAM.....**I. L. Rep. 2 Bom. 97.**

NANA *v.* ANANT.....**Ibid. 353.**

SHANKAR *v.* VISHNU...**I. L. Rep. 1 Bom. 67.**

NANA *v.* ANANT...**I. L. Rep. 2 Bom. 353.**

NARSAPPA *v.* GURUVAPPA...**I. L. Rep. 1 Mad. 378.**

RAM D. KOER *v.* THACOOR ROY... **I. L. Rep. 4 Cal. 61.**

AHMAD BAKSH *v.* GOBINDI...**I. L. Rep. 2 All. 216.**

Digitized by Google

INTEREST CREATED IN IMMOVEABLE PROPERTY, COMPUTATION OF VALUE OF, FOR REGISTRATION PURPOSES—*contd*

—— *Contra.*

See **Registration. 19. 21.**

RAJAPATI SINGH *v.* RAM SAKHI KUAR.....**I. L. Rep. 2 All. 40.**

DARBHAN SINGH *v.* HANMANTA... **I. L. Rep. 1 All. 274.**

INTEREST ON MESNE PROFITS.

See **Execution of Decree. 20.**

HURRODURGA *v.* SHARRAT S. DABEEA.....**I. L. Rep. 4 Cal. 674.**

See **Interest. 12.**

HURROPERSAUD *v.* SHAMAPERSAUD. **L. R. 5 I. A. 31; I. L. Rep. 3 Cal. 654.**

See **Mesne Profits. 1. 4.**

SADASIVA *v.* RAMALINGA...**L. Rep. 2 I. A. 219.**

LUCKHY NARAIN *v.* KALLY P. BANNERJEE.. **I. L. Rep. 4 Cal. 882.**

INTEREST ON PROFITS—Power of Revenue Courts to award—in Suit for Profits.

See **Act XVIII. of 1873, § 93, Cl. (h).**

TOTA RAM *v.* SHER SINGH...**I. L. Rep. 1 All. 261.**

INTERIM INJUNCTION — In Suit for Specific Performance of Contract to give in Marriage, to restrain Defendant from giving her daughter to another than plaintiff, will not be granted.

See **Injunction. 1.**

GUNPAT NARAIN SINGH...**I. L. Rep. 1 Cal. 74.**

INTERLOCUTORY ORDER—Appeal to the Privy Council from an.

See **Appeal to the Privy Council. 3.**

PALAK DHARI *v.* RADHA PARSAD... **I. L. Rep. 2 All. 65.**

—— No Appeal from—to Privy Council.

See **Appeal to the Privy Council. 5.**

TETLEY *v.* JAI SHANKAR.....**I. L. Rep. 1 All. 726.**

INTERROGATORIES.

See **Practice—Civil. 6.**

GOSTO BEHARY PAL *v.* JOHUR LALL PAL...**I. L. Rep. 4 Cal. 836.**

INTERRUPTION OF EASEMENT.

See **Easement. 1.**

SHAMA CHURN *v.* TARINEY CHURN. **I. L. Rep. 1 Cal. 422.**

—— Acquiescence in.

See **Limitation. 48.**

SUBBRAMANIYA *v.* RAMACHANDRA. **I. L. Rep. 1 Mad. 335, 339.**

INTERVENOR.

See **Criminal Procedure Code, Act X. of 1872, § 530. 4.**

KUNUND NARAIN BHOOP.....**I. L. Rep. 4 Cal. 650.**

IRREGULARITY NOT AFFECTING THE MERITS.

See **Error not affecting the Merits.**

IRREGULARITIES IN CRIMINAL PROCEEDINGS.

—— Waiver of—by Prisoner.

See **Disqualifying Interest of Judge.**

REG. *v.* BHOLANATH SEN...**I. L. Rep. 2 Cal. 23.**

IRREGULARITY IN EXECUTION PROCEEDINGS.

—— Material—Material Error in Notification of Sale.

See **Sale in Execution of Decree. 18.**

GIRDHARI *v.* HURDEO...**L. Rep. 3 I. A. 230.**

—— Material—Postponement of Sale—Omission to issue Fresh Proclamation.

See **Sale in Execution of Decree. 6.**

GOPI NATH *v.* ROY LUCHMIPUT... **I. L. Rep. 3 Cal. 542.**

—— Material—Release of Part of Property attached before Date of Sale—Omission of Fresh Proclamation.

See **Sale in Execution of Decree. 11.**

SHIB PROKASH *v.* SARDAR DAYAL... **I. L. Rep. 3 Cal. 544.**

—— Material—Sale of *Khalisa* Mahal—Insufficient Description of Plan of Sale.

See **Sale in Execution of Decree. 8.**

SHOWERS *v.* SETH GOBIND DASS... **I. L. Rep. 1 All. 400.**

Digitized by Google

IRREGULARITY IN EXECUTION PROCEEDINGS—Not Affecting Judgment Debtor.

See **Sale in Execution of Decree. 2.**

GHAZI *v.* KADIR BAKSH.....**I. L. Rep. 1 All. 212.**

IRREGULARITY AT SALE IN EXECUTION OF DECREE.

See **Sale in Execution of a Decree. 16.**

THE COURT OF WARDS *v.* GAYA PERSAD.....**I. L. Rep. 2 All. 107.**

ISSUE NOT ABSOLUTELY NECESSARY FOR DETERMINATION OF CASE—Determination of.

See **Res Judicata. 27.**

MAUN SINGH *v.* NARRAYAN DAS... **I. L. Rep. 1 All. 480.**

ISSUES.

Mahomedan Law--Gift. 2.

AMEEROONISSA *v.* ABEDOONISSA... **I. L. Rep. 2 I. A. 87.**

—— Amendment of—at the Hearing.

See **Amendment of Issues at the Hearing.**

BOYLE CHUND SINGH *v.* MAULARD. **I. L. Rep. 4 Cal. 572.**

—— Decision on one of several.

See **Letters Patent (1865), § 15 (Calcutta).**

EBRAHIM *v.* FUCKEERUNNISSA BEGUM...**I. L. Rep. 4 Cal. 531.**

1. —— *Practice—Framing Issues—Duty of the Judge.*] The plaintiff sued to recover certain fees from the defendant for officiating at the marriage of the defendant's son. The plaint set forth, but only incidentally, the claim of the plaintiff as resting on his *hak* or right as head of the caste; and alleged that, in accordance with that right, he had been invited to officiate, and had officiated at the wedding. The Subordinate Judge raised the issue "What are the plaintiff's rights on the occasion of a marriage," and this issue was accepted by the parties without objection. The Subordinate Judge ruled that although the plaintiff was head of the caste, he could not have any right in that character to fees at weddings, and dismissed the suit. The District Judge, on appeal, found that the right to any such fees as the plaintiff claimed had been extinguished by Act XIX. of 1844; and also, that the plaintiff was not invited by the defendant to perform any services, and that he had performed none; and confirmed the decision of the Subordinate Judge.

Held, by the High Court (on an application under the Extraordinary Jurisdiction) reversing the decrees of the lower Courts, that Act XIX. of 1844 did not apply to the case; and that it was competent to the Subordinate Judge to raise the issue he did, and that the District Judge was bound to decide it, *viz.*, the question, whether, invited or uninvited, the plaintiff was entitled by custom to a fee in respect of marriages among members of the defendant's caste.

It is part of the duty of a Judge, who settles the issues, to ascertain as clearly as he can, on inquiry of the parties or their pleaders, the real points in dispute between them, though those points may have been obscured or missed by the mode of drawing the pleadings. APAYA *v.* RAMA. *Westropp*, C.J., on a reference by *West* and *Pinhey*, JJ...**I. L. Rep. 3 Bom. 210, 1879.**

2. —— *Too great Generality of—Fresh Issues.*] Where an issue, though in terms covering the main question in the cause, does not sufficiently direct the attention of the parties to the main question of fact necessary to be decided, and a party may have been prevented from adducing evidence, a fresh issue may be directed to try the principal question of fact. OOLAGAPPA CHETTY *v.* HON. D. ARBUTHNOT... **L. Rep. 1 I. A. 268; 14 Beng. L. R 115, 1874.**

S. C. under **Polliem. 2.**

JAGGANATHA—Authority of.

See **Hindu Law — Authority of Writers. 5.**

MORARJI *v.* PARVATIBAI ... **I. L. Rep. 1 Bom. 177.**

JAGHIRE—*Primâ facie* Life Estate—Construction of Grant of.

See **Grant of Jaghire by the East India Company.**

GULABDAS *v.* COLLECTOR OF SURAT. **L. Rep. 6 I. A. 54.**

Digitized by Google

JAIN LAW—Adoption of Sister's Son valid by.

See **Hindu Law—Adoption. 1.**

HASSAN ALI *v.* NAGA MAL...**I. L. Rep. 1 All. 289.**

1. —— *Position of Jains—Sudras.*] "In Allahabad a Saravgi Jain has been allowed to adopt a sister's son by the custom of his country (*Hasan Ali* v. *Nagamal* (I. L. Rep. 1 All. 288); but Jains, if classed among Hindus, would be so no higher than Sudras." *Per Westropp*, C.J., in GOPAL NARHAR SAFRAY *v.* HANMANT GANESH SAFRAY...**I. L. Rep. 3 Bom. 273, 292.**

2. —— *Proof of Custom—Widow's Estate—Adoption.*] In a suit to establish a Jain widow's right of inheritance to her husband's estate, (under the usages and customs of the Saravgi religion)and to uphold her adoption of her daughter's son, as well as his right to succeed her after her death, by voiding the pretensions of the defendant (brother of the deceased proprietor), who claimed as next of kin under Hindu law, and under a nuncupative will alleged to have been made in his favour:—

Held, that although ordinary Hindu law, in the absence of proof of special custom, has usually been applied to persons of the Jaina sect in Bombay, yet the Jains possess the privilege of being governed by their own peculiar laws and customs, when those laws and customs are, by sufficient evidence, capable of being ascertained and defined, and are not open to objection on grounds of public policy or otherwise.

Held, on the evidence, that—

(1.) A sonless widow of a Saravgi-Agarwala takes, by the custom of the sect, a very much larger dominion over the estate of her husband than is conceded by Hindu law to the widows of orthodox Hindus—to the extent at least of absolute interest in the self-acquired property of her husband.

(2.) A sonless widow also enjoys the right of adoption without the permission of her husband or the consent of his heirs.

(3.) A daughter's son may be adopted, and on adoption takes the place of a begotten son. SHEO SINGH RAI *v.* MUSSUMUT DAKHO...**L. Rep. 5 I. A. 87; I. L. Rep. 1 All. 688; 2 Cal. Rep. 193.**

S. C. under **Declaratory Decree. 11,** and **Practice—Privy Council. 9.**

JAIN LAW—*contd.*

3. —— *Absence of Proof of Custom.*] The customs of the Jains, where they are relied on, must be proved by evidence, as other special customs and usages varying the general law should be proved, and in the absence of proof the ordinary Hindu law of inheritance must prevail. *Sheo Singh Rai* v. *Mussumut Dakho* (L. Rep. 5 I. A. 87) approved. CHOTAY LALL *v.* CHUNNOO LALL...**L. Rep. 6 I. A. 15, 1878; I. L. Rep. 4 Cal. 744.**

S. C. under **Hindu Law—Inheritance—Daughters. 4.**

JALKAR—Lessee of—cannot acquire Right of Occupancy.

See **Right of Occupancy. 6.**

BOLLYE SATEE *v.* AKRAM ALLY... **I. L. Rep. 4 Cal. 961.**

—— Tidal River.

See **Right of Fishery in Public Navigable Rivers.**

PROSUNNO COOMAR *v.* RAM COOMAR...**I. L. Rep. 4 Cal. 50.**

1. —— *Fishery — Occupancy Rights of.*] The right of occupancy which accrues to tenants who have occupied or cultivated lands for twelve years or upwards, does not arise in respect of the right called jalkar or fishery. That is a right which may be let out by ijaradars under the landlord, and may be enjoyed under them so long as their ijara continues, but is liable to be determined at the expiration of the ijara. JUGGOBUNDHOO SHAHA *v.* PROMOTHONATH ROY. *Jackson* and *McDonnell*, JJ...**I. L. Rep. 4 Cal. 767, 1879.**

2. —— *Easement—Act IX. of* 1871, § 27, *and Sched. II., Art.* 145.] A jalkar is not an easement within the meaning of § 27 of Act IX. of 1871. A jalkar is the right to take the profits of a river, lake, or other water on a particular estate, or tract of country; and though the right to jalkar may not involve any actual property in the soil over which the water flows, it is still an interest in immoveable property within the meaning of Art. 145, Sched. II., Act. IX. of 1871. Where the defendants had been for more than twelve years continuously under, a claim of right, exercising the right of fishing in a certain water adversely to the plaintiff:—

Held, that a suit by the plaintiff for a declaration that he was entitled to the exclusive right of fishing in such water, was barred by limitation.

Digitized by Google

JALKAR—*contd.*

PARVUTTY NATH ROY *v.* MUDHO PAROE. *Garth*, C.J., and *Birch*, J...**I. L. Rep. 3 Cal. 276; 1 Cal. Rep. 592, 1878.**

JAMABANDI—*Public Document—Evidence Act I. of* 1872, § 74—*Reg. VII. of* 1822 (*Beng.*)—*Consent of Ryot.*] The Act of a Deputy Collector, in making a settlement, or even an inquiry, under the provisions of Reg. VII. of 1822 (Beng.), is that of a public officer, whether it be judicial or executive, and the record of such act is a public document. A jamabandi, therefore, prepared by a Deputy Collector while engaged in the settlement of land under (Beng.) Reg. VII. of 1822, is a "public document" within the meaning of § 74 of the Evidence Act (I. of 1872).

It is not necessary to show that, at the time of preparing such a document, a ryot affected by its provisions was a consenting party to the terms specified therein, as its validity is not dependent on such consent. TARU PATUK *v.* ABINASH CHUNDER DUTT. *Jackson* and *Tottenham*, JJ...**I. L. Rep. 4 Cal. 79, 1878.**

JEW—Second Marriage of—in Lifetime of First Wife.

See **Indian Succession Act X. of 1865, § 56.**

GABRIEL *v.* MORDAKAI.....**I. L. Rep. 1 Cal. 148.**

JIMUTA VAHANA—Authority of.

See **Hindu Law — Authority of Writers. 5.**

MORARJI *v.* PARVATIBAI.....**I. L. Rep. 1 Bom. 177.**

JOINDER OF CHARGES.

See **Criminal Procedure Code, §§ 452 and 453 to 454.**

REG. *v.* HANMANTA...**I. L. Rep. 1 Bom. 610**

See EMPRESS *v.* DONONJOY...**I. L. Rep. 3 Cal. 540.**

And *see* the Case under **Convictions on Several Charges.**

JOINDER OF PARTIES.

See **Abatement of Appeal—Civil.**

MORESHVAR *v.* KUSHABA.....**I. L. Rep. 2 Bom. 248.**

JOINDER OF PARTIES—*contd.*

—— Drawer and Acceptor of Bill.

See **Practice—Civil. 5.**

PESTONJEE *v.* MIRZA MAHOMED...**I. L. Rep. 3 Cal. 541.**

—— Sale of Goods by Sample—Suit for Damages for Bulk not corresponding with Sample—Plaintiff cannot be compelled to add Defendant's Vendors as Parties.

See **Civil Procedure Code, Act X. of 1877, § 32. 1.**

MAHOMED BADSHA *v.* NICOL, FLEMING & Co...**I. L. Rep. 4 Cal. 355.**

—— Suit by one of two Co-Mortgagees, Lessors, for Moiety of Rent—Co-Mortgagee added as Defendant.

See **Civil Procedure Code, Act X. of 1877, § 32. 2.**

SHIB GOPAL *v.* BALDEO SAHAI...**I. L. Rep. 2 All. 264.**

JOINT CONTRACTORS—*Suit against*—Res judicata—*Contract Act IX. of* 1872, § 43.] The plaintiff sued the present defendants and one *G.* on a joint promissory note, but obtained a decree against *G.* only, and was allowed to withdraw the suit against the two present defendants with leave to bring a fresh suit against them for the same matter. No satisfaction of the decree having been obtained against *G.*, the present suit was brought:—

Held, that the judgment obtained in the former suit, though unsatisfied, was a bar to the present suit. The rule laid down in *King* v. *Hoare* (13 M. & W. 494, 505) and *Brinsmead* v. *Harrison* (L. Rep. 7. C. P. 547) is not a rule of procedure only, but of principle, *viz.*, that a judgment obtained against one or more of several joint contractors or joint wrong-doers operates as a bar to a second suit against any of the others. There is but one cause of action for the injured party in the case of either a joint contract or joint tort; and that cause of action is exhausted and satisfied by a judgment being obtained by the plaintiff against all or any of the joint contractors or joint wrong-doers whom he chooses to sue.

The effect of § 43 of the Contract Act is not to change a joint liability into a several one at the option of the promisee; it merely allows the promisee to sue one or more of several promissors in one suit, and so practically prohibits a

Digitized by Google

JOINT CONTRACTORS—*contd.*
defendant in such suit from objecting that his co-contractors ought to have been sued with him; it places the liability arising from a breach of a joint contract, and the liability arising from a joint tort, on the same footing, that is to say, that each wrong-doer is liable to be sued separately in respect of the whole liability. HEMENDRO COOMAR MULLICK *v.* RAJENDROLALL MOONSHEE. *Garth*, C.J., and *Markby*, J.....**I. L. Rep. 3 Cal. 353; 1 Cal. Rep. 488, 1878.**

JOINT DECREE — Application for Partial Execution of.

See **Limitation. 75.**

RAM AUTAR *v.* AJUDHIA SINGH... **I. L. Rep. 1 All. 231.**

JOINT ESTATE OF TWO OR MORE WIDOWS—Separate Enjoyment—Survivorship.

See **Hindu Law — Inheritance — Widows. 2.**

SRI GAJAPATHI NILAMANI PATHA MAHA DEVI GURU *v.* SRI GAJAPATHI RADHAMANI PATHA MAHA DEVI GURU...**L. Rep. 4 I. A. 212.**

JOINT HINDU FAMILY.

See the cases under **Hindu Law—Undivided Family.**

—— Alienation by Member of.

See the cases under **Hindu Law—Alienation of Ancestral Property.**

—— Partition.

See the cases under **Hindu Law—Partition.**

JOINT MUTTUWALLIS—Survivorship.

See **Mahomedan Law—Wakf.**

PHATE SAHEB *v.* DAMODAR...**I. L. Rep. 3 Bom. 84.**

JOINT OWNERS OF UNDIVIDED ESTATE—Suit by one of—for Damages from Sale of Whole through Default of one of the—in Payment of Government Revenue, will not lie.

See **Damages. 1.**

LALLAH RAMESSHUR *v.* LALLAH BISSEN.....**I. L. Rep. 1 Cal. 406.**

JOINT TENANCY—Grant of Village in *Inam* jointly to Members of Undivided Family.

See **Hindu Law—Undivided Family. 1.**

RADHABAI *v.* NANARAV ... **I. L. Rep. 3 Bom. 151.**

JOINT TRIAL—of Separate Offences.

See **Criminal Procedure Code, Act X. of 1872, § 452.**

REG. *v.* HANMANTA...**I. L. Rep. 1 Bom. 610.**

JUDGE—Duty of.

See infra.

—— Duty of—in framing Issues.

See **Issues. 1.**

APAYA *v.* RAMA.....**I. L. Rep. 3 Bom. 210.**

—— Examination of—as Witness.

See **Disqualifying Interest of Judge.**

REG. *v.* BHOLANATH SEN.....**I. L. Rep. 2 Cal. 23.**

See **Evidence. 22.**

EMPRESS *v.* DONNELLY...**I. L. Rep. 2 Cal. 405.**

—— Importing Personal Knowledge of Facts.

See **Judge Importing his Personal Knowledge of Facts.**

HURPARSHAD *v.* SHEO DYAL.....**I. L. Rep. 3 I. A. 259-286.**

—— Interest of—in Case *sub Judice.*

See **Disqualifying Interest of Judge.**

REG. *v.* BHOLANATH SEN.....**I. L. Rep. 2 Cal. 23.**

—— *Duty of.*] Officers who act as Judges, if entrusted at the same time with administrative duties, ought to be most scrupulous in the endeavour to form their opinions independently. They ought not to refer to their superiors, whether judicial or administrative, for opinions to enable them to form their own judgments, or for instructions or orders directing them as to the course which they as Judges ought to pursue. THAKOOR HARDEO BUX *v.* THAKOOR JAWAHIR SINGH.....**L. Rep. 4 I. A. 178-191, 1877.**

S. C. under **Act I. of 1869, 6,** and **Appeal to the Privy Council. 2.**

Digitized by Google

JUDGE ACTING IN ENGLISH DEPARTMENT OF HIGH COURT, POWER OF—To transfer Case.

See **Criminal Procedure Code, Act X. of 1872, § 64.**

REG. *v.* ZUHIRUDDIN...**I. L. Rep. 1 Cal. 219.**

JUDGE IMPORTING HIS PERSONAL KNOWLEDGE OF FACTS—"It ought to be known, and their Lordships wish it to be distinctly understood, that a Judge cannot, without giving evidence as a witness, import into a case his own knowledge of particular facts." HURPURSHAD *v.* SHEO DYAL...**L. Rep. 3 I. A. 259. 286. 1876.**

S. C. under **Oudh Proclamation of 1868, para. 8.**

JUDGE'S NOTES—Use of—in construing Decree.

See **Construction of Decree.**

SUMAR AHMED *v.* HAJI ISMAIL... **I. L. Rep. 1 Bom. 158.**

"JUDGMENT."

See **Letters Patent, 1865, § 15 (Calcutta).**

EBRAHIM *v.* FUCKIRUNNISSA BEGUM.. **I. L. Rep. 4 Cal. 531.**

—— Suit on—Limitation.

See **Limitation. 62.**

SAKHARÁM DIKSHIT *v.* GANESH SATHE...**I. L. Rep. 3 Bom. 193.**

—— *Object and Nature of.*] In discussing the evidence respecting the genuineness of an alleged authority to adopt, their Lordships of the Privy Council observed that the proper object of a judgment was, to support, by the most cogent reasons that suggest themselves, the final conclusions at which the Judge has conscientiously arrived. That object is defeated by the Judge elaborately recording the fluctuations of his mind from day to day, in reference to the witnesses, the evidence, and the arguments. It is a substantial objection to such a judgment, that it does not dispose of the question as it was presented by the parties, *e.g.*, where it finds a particular signature to be a forgery, which both sides admit to be genuine. SRI RAGHUNADHA *v.* SRI BROJO KISHORO...**L. Rep. 3 I. A. 154 ; I. L. Rep. 1 Mad. 69.**

"JUDGMENT"—*contd.*

S. C. under **Hindu Law—Adoption. 11,** and **Succession to Impartible Zemindary for which no Permanent Sunnud is issued.**

JUDGMENT OF ACQUITTAL.

See **Appeal—Criminal. 4.**

EMPRESS *v.* JUDOONATH GANGOOLY...**I. L. Rep. 2 Cal. 273.**

JUDGMENT OF DIVISION COURT—Appeal from.

See **Letters Patent—Allahabad, Cl. 10.**

GHASI RAM *v.* MUSAMAT NURAJ BEGAM...**I. L. Rep. 1 All. 31.**

JUDGMENT CREDITOR—Representative of—Right of, to continue Execution Proceedings—Limitation.

See **Limitation. 95.**

GULABDAS *v.* LAKSHMAN NARHAR. **I. L. Rep. 3 Bom. 221.**

JUDGMENT DEBTOR NOT PARTY TO PROCEEDINGS UNDER ACT VIII. OF 1859, § 246—Limitation.

See **Civil Procedure Code, Act VIII. of 1859, § 246. 3.**

IMBICHI KAYA *v.* KAKUNNAT UPAKI...**I. L. Rep. 1 Mad. 391.**

JUDGMENT EX PARTE—Against Defendant not appearing at Adjourned Hearing—Appeal.

See **Civil Procedure Code, Act VIII. of 1859, § 119. 1.**

ZAIN-UL-ABDIN KHAN *v.* AHMED RAZA KHAN.....**I. L. Rep. 2 All. 67 ; L. Rep. 5 I. A. 233.**

—— Appeal from.

See **Appeal—Civil. 2. 9.**

LUKHMIDAS *v.* EBRAHIM.....**I. L. Rep. 2 Bom. 644.**

GULAB SINGH *v.* LACHMAN DAS... **I. L. Rep. 1 All. 748.**

See **Civil Procedure Code, Act VIII. of 1859, § 119. 1.**

ZAIN-UL-ABDIN KHAN *v.* AHMAD RAZA KHAN...**I. L. Rep. 2 All. 67 ; L. Rep. 5 I. A. 233.**

Digitized by Google

JUDGMENT EX PARTE—*contd.*

—— Appeal from Order refusing to set aside a.

See **Appeal—Civil. 2. 9.**

LUKHMIDAS *v.* EBRAHIM.....**I. L. Rep. 2 Bom. 644.**

GULAB SINGH *v.* LACHMAN DAS... **I. L. Rep. 1 All. 748.**

—— In Appeal—Appeal from—by Respondent.

See **Appeal—Civil. 6. 27.**

KALI KISHORE ROY *v.* DHUNUNJOY ROY...**I. L. Rep. 3 Cal. 228.**

Ex parte MADALATHA... .....**I. L. Rep. 2 Mad. 75.**

—— Effect of—Admissibility in Evidence.

See **Judgment ex parte. 2.**

—— Refusal to receive Written Statement as not in Time, but Issues framed in Presence of, and Witnesses cross-examined by, Defendant's Pleader.

See **Judgment ex parte. 3.**

—— Rehearing granted after Expiration of Time limited for Application.

See **Civil Procedure Code, Act VIII. of 1859, § 119. 2.**

RUNGLAL MISSER *v.* TOKHUN MISSER...**I. L. Rep. 2 Cal 114.**

—— Second Appeal from.

See **Appeal—Civil. 27.**

Ex parte MADALATHA...**I. L. Rep. 2 Mad. 75.**

1. —— *Act XI. of* 1865, § 21—*Non-Appearance of Defendant's Pleader at Hearing.*] There is nothing in the first part of § 21, Act XI. of 1865, showing that the Legislature intended to limit its provisions to the first occasion on which the defendant might have put in an appearance. Where, therefore, a case is adjourned from the date fixed in the summons to any later date, and on such later date the defendant is prevented by sufficient cause from appearing, he may make an application under that section. *In the matter of* DAYAL MISTREE *v.* KUPOORCHAND. *Ainslie* and *Maclean*, JJ.....**I. L. Rep. 4 Cal. 318; 3 Cal. Rep. 482, 1878.**

2. —— *Effect of—Admissibility in Evidence.*] A decree obtained *ex parte* is, in the absence of fraud or irregularity, for purposes of evidence, as good as any other decree, and as binding for all purposes as a decree in a contested suit.

JUDGMENT EX PARTE—*contd.*

Such a decree is admissible in evidence in a subsequent suit between the same parties, though the plaintiff may not have taken out execution of it, and though the period provided for executing it may have expired. BIRCHUNDER MANICKYA *v.* HURRISH CHUNDER DASS. *Garth*, C.J., and *Birch*, J.....**I. L. Rep. 3 Cal. 383; 1 Cal. Rep. 585, 1878.**

S. C. under **Res Judicata. 12.**

3. —— *Act VIII. of* 1859, § 119—*Refusal to receive Written Statement as not in time—Issues framed in presence of, and Witnesses cross-examined by, Defendant's Pleader*] The Court of first instance refused to receive the defendant's written statement, because it was tendered after the day on which the Court had ordered it to be filed, and the delay was not satisfactorily accounted for. The Court, however, framed the issues in the presence of the defendant's vakil, who was also allowed to cross-examine the plaintiff's witnesses. The Court decreed for the plaintiff. On appeal the District Judge held that the decree of the Court of first instance was *ex parte* under § 119 of Act VIII. of 1859, and that no appeal lay.

Held on special appeal, that the decree of the first Court was not under the circumstances *ex parte*. RAGHAPA HANNAPA *v.* PARAPA SHIVAPA. *Westropp*, C.J., and *Kemball*, J .....**I. L. Rep. 1 Bom. 217, 1876.**

JUDGMENT AGAINST A PERSON TAKING POSSESSION OF THE ESTATE OF A DECEASED HINDU.

See **Person taking Possession of the Estate of a Deceased Hindu.**

PROSUNNO CHUNDER BHUTTACHARJEE *v.* KRISTO CHYTUNNO PAL...**I. L. Rep. 4 Cal, 342.**

JUDGMENT INTER PARTES.

See the cases under **Res Judicata.**

"JUDICIAL PROCEEDINGS."

See **Appeal—Civil. 9.**

RUNJIT SINGH *v.* MEHURBAN KOER. **I. L. Rep. 3 Cal. 662.**

See **Civil Procedure Code, Act X. of 1877, § 2.**

DALPATBAI *v.* AMARSANG...**I. L. Rep. 2 Bom. 553.**

Digitized by Google

"JUDICIAL PROCEEDINGS"—*contd.*

—— Admitting Accused to Bail under § 390 of Act X. of 1872.

See **Criminal Procedure Code, Act X. of 1872, § 297. 2.**

REG. *v.* GHOLAM ISMAIL .....**I. L. Rep. 1 All. 1.**

—— Inquiry by Magistrate under § 135 of Act X. of 1872 is not a.

See **Report of Magistrate.**

TROYLOKANATH BISWAS *v.* RAM CHURN BISWAS .....**I. L. Rep. 3 Cal. 742.**

—— Magistrate arresting Persons acquitted, pending Appeal.

See **Criminal Procedure Code, Act X. of 1872, § 297. 2.**

REG. *v.* GHOLAM ISMAIL...**I. L. Rep. 1 All. 1.**

—— Magistrate's Order under § 518 of Criminal Procedure Code, Act X. of 1872, is not a.

See **Stat. 24 & 25 Vict., Cl. 104, § 15. 5.**

CHUNDER NATH SEN...**I. L. Rep. 2 Cal. 293.**

—— *Act X. of* 1872, § 416.] It may perhaps be doubted whether the mere issue of a proclamation under § 416 of the Criminal Procedure Code (Act X. of 1872) is a judicial proceeding within the meaning of § 297 of that Act. At the same time "judicial proceeding" means any proceeding in the course of which evidence is or *may be taken*, or in which any judgment, sentence, or final order is passed on recorded evidence. The action of the Magistrate in issuing the proclamation is to require any person who may have a claim to such property as may be sent in by the police under § 415 to appear before him and establish his claim within six months. This is possibly a stage of a judicial proceeding, for at the expiration of the term provided by the proclamation it is probable that a claimant might appear, and evidence would be recorded. *Per Spankie*, J., in EMPRESS *v.* NILAMBAR BABU...**I. L. Rep. 2 All. 276, 278, 1879.**

S. C. under **Order for Disposition of Property suspected to be stolen** and under **Criminal Procedure Code, Act X. of 1872, § 297. 10.**

JUDICIAL SEPARATION — Desertion — Adultery — Act IV. of 1869, § 3, Cl. 9, §§ 9 and 37.

See **Divorce. 3.**

FOWLE *v.* FOWLE...**I. L. Rep. 4 Cal. 260.**

JURIDICAL AS OPPOSED TO PHYSICAL POSSESSION.

See **Limitation. 35.**

MADHUB CHUNDER *v.* SHAM CHAND...**I. L. Rep. 3 Cal. 243.**

JURISDICTION—Act of State.

See **Act of State. 1.**

SIRDAR BHAGWAN SINGH *v.* SECRETARY OF STATE FOR INDIA.....**L. Rep. 2 I. A. 38.**

See **Right to Sue. 7.**

NOBIND CHUNDER DEY *v.* SECRETARY OF STATE FOR INDIA ..**I. L. Rep. 1 Cal. 11.**

—— Appeal from Assessment by Municipal Commissioners.

See **Bengal Act III. of 1864, § 33.**

MANESSUR DASS *v.* COLLECTOR, &c., OF CHAPRA....**I. L. Rep. 1 Cal. 409.**

—— Application to file Award.

See **Suit for Land. 3.**

KELLIE *v.* FRASER...**I. L. Rep. 2 Cal. 445.**

—— Arrears of Grain Rent — Suit for Money Equivalent.

See **Act XVIII. of 1873, § 93. 1.**

TAJUDDIN KHAN *v.* RAM PARSHAD BHAGAT ..**I. L. Rep. 1 All. 217.**

—— Of Bench of Magistrates.

See **Criminal Procedure Code, Act X. of 1872, § 530. 5.**

SUFFERUDDIN *v.* IBRAHIM...**I. L. Rep. 3 Cal. 754.**

—— Bill of Exchange drawn in Foreign Country by British Subject not Domiciled or Resident therein, for Debt due to Creditor in Foreign Country—Jurisdiction of Foreign Court.

See **Jurisdiction. 7.**

Digitized by Google

JURISDICTION—*contd.*

—— Of the British Consul at Zanzibar.

See **Zanzibar.**

WAGJI KORJI *v.* THARIA TOPAN... **I. L. Rep. 3 Bom. 58.**

—— Of Civil Court—to entertain Suit cognizable by Small Cause Court, where Small Cause Court exists.

See **Small Cause Court—Mofussil. 7.**

DYEBUKEE NUNDUN *v.* MUDHOO MUTTY...**I. L. Rep. 1 Cal. 123.**

—— Of Civil and Revenue Courts.

See **Vendor and Purchaser. 2.**

HIRA LAL *v.* GANESH PRASAD...**I. L. Rep. 2 All. 415.**

—— Of Civil and Revenue Courts—Arrears of Rent payable in Grain—Suit for Money Equivalent.

See **Act XVIII. of 1873, § 93. 1.**

TAJUDDIN KHAN *v.* RAM PARSHAD BHAGAT...**I. L. Rep. 1 All. 217.**

—— Of Civil and Revenue Courts—Suit by Co-Sharer in Undivided Mahal against Lambardar for Share of Profits.

See **Act XVIII. of 1873, § 93. 2.**

BHIKHAN KHAN *v.* RATAN KUAR. **I. L. Rep. 1 All. 512.**

—— Of Civil and Revenue Courts—Lease by Occupancy Tenant—Ejectment of Lessee by Landholder in Execution of Decree against Lessor—Reversal of Decree—Suit by Lessee for Possession and Mesne Profits.

See **Act XVIII. of 1873, § 95. 1.**

KALIAN DASS *v.* TIKA RAM ..**I. L. Rep. 2 All. 137.**

—— Of Civil and Revenue Courts—Lease of Zemindary Rights—Wrongful Dispossession of Lessee by Lessor—Suit for Compensation.

See **Act XVIII. of 1873, § 95, Clm. 1.**

ABDUL AZIZ *v.* WALI KHAN...**I. L. Rep. 1 All. 338.**

JURISDICTION—*contd.*

—— Of Civil and Revenue Courts—Partition effected by Revenue Authorities.

See **Partition by Revenue Authorities. 1.**

SHARAT CHUNDER *v.* HURGOBINDO. **I. L. Rep. 4 Cal. 510.**

—— Of Civil and Revenue Courts—Record of Rights—Civil Courts have jurisdiction to determine Question of Right between Parties, notwithstanding Entry in Record of Rights.

See **Jurisdiction 5.**

—— Of Civil and Revenue Courts—Suit by Landlord against his Dewan containing Items of Claim cognizable by Civil Court.

See **Jurisdiction. 2.**

—— Of Civil and Revenue Courts—Suit for Declaration of Proprietary Right to—and Possession of Lands—Denial of Plaintiff's Right.

See **Jurisdiction. 8.**

—— Of Court executing a Decree of another Court.

See **Execution of Decree. 12.**

SHIB NARAIN *v.* BEPIN BEHARY. **I. L. Rep. 3 Cal. 512.**

—— Declaratory Decrees—Jurisdiction of Civil Courts in respect of Power to grant Declaratory Decree.

See **Declaratory Decree. 5.**

RAM NEEDHEE *v.* RAJAH RAGHOO NARAIN...**I. L. Rep. 1 Cal. 456.**

—— Dissolution of Partnership, Suit for.

See **Jurisdiction. 6.**

—— Of District Court of Akyab.

See **Jurisdiction. 9.**

—— Dwelling—Residence.

See **Jurisdiction. 3.**

—— Ejectment—*Sir* Land.

See **Act XVIII. of 1873, § 7. 1.**

BAKHAT RAM *v.* WAZIR ALI...**I. L. Rep. 1 All. 448.**

Digitized by Google

JURISDICTION—*contd.*

—— Exceeding, or Refusing to exercise — Grounds for Exercise of Powers of Superintendence of High Court.

See **Stat. 24 & 25 Vict., C. 104, § 15. 1. 3. 4.**

LUKHYKANT *v.* BOSE...**I. L. Rep. 1 Cal. 180.**

TEJ RAM *v.* HARSUKH...**I. L. Rep. 1 All. 101.**

MATTARA PARSHAD...**Ibid. 296.**

—— Execution issued without — Refund of Amount levied.

See **Execution of Decree. 5.**

See **Estoppel. 2.**

GOVIND *v.* SAKHARAM...**I. L. Rep. 3 Bom. 42.**

—— Foreclosure—Mortgage of Lands partly in Oudh and partly in N. W. P.

See **Mortgage. 24.**

SURJAN SINGH *v.* JAGANNATH SINGH...**I. L. Rep. 2 All. 313.**

—— Foreign Court in respect of Bill of Exchange drawn in Foreign Territory by British Subject neither Domiciled nor Resident therein.

See **Jurisdiction. 7.**

—— Foreign Judgment—Suit on.

See **Jurisdiction. 7.**

—— Of High Court.

See the Index heading **Jurisdiction of High Court.**

—— High Seas—Injury to Fishing Stakes.

See **Jurisdiction. 10.**

BABAN *v.* NAGU...**I. L. Rep. 2 Bom. 19.**

—— Mortgage of Lands in different Districts—Redemption of Land within Jurisdiction of Court in which Redemption Suit filed.

See **Jurisdiction. 4.**

—— Municipal Tax—Suit to recover—levied from Plaintiff.

See **Jurisdiction. 1.**

JURISDICTION—*contd.*

—— Municipality—Suit against.

See **Jurisdiction. 18.**

See **Suit against a Municipality. 1.**

THE AHMEDABAD MUNICIPALITY *v.* MAHOMED JAMAL...**I. L. Rep. 3 Bom. 146.**

—— Objection to—First taken on Appeal.

See **Appeal—Civil. 3.**

BAI MAKHOR *v.* BULAKHI...**I. L. Rep. 1 Bom. 538.**

—— Offence committed in Foreign Territory.

See **Criminal Procedure Code, Act X. of 1872, § 67. 1. 2.**

REG. *v.* ADIVIGADU...**I. L. Rep. 1 Mad. 171.**

REG. *v.* LAKHYA...**I. L. Rep. 1 Bom. 50.**

See **Criminal Procedure Code, Act X. of 1872, § 157.**

REG. *v.* LOCHA...**I. L. Rep. 1 Bom. 340.**

See **Offence committed in Foreign Territory.**

EMPRESS *v.* DOSSAJI...**I. L. Rep. 3 Bom. 334.**

—— Offence committed in Native State by Native Indian Subject of Her Majesty.

See **Offence committed at Cyprus.**

EMPRESS *v.* SARMUKH SINGH...**I. L. Rep. 2 All. 218.**

—— Partition by Revenue Authorities.

See **Partition by the Revenue Authorities. 1.**

SHARAT CHUNDER *v.* HARGOVINDO. **I. L. Rep. 4 Cal. 510.**

—— Possession in British Territory of Adulterated Cotton—Adulteration in Foreign Territory.

See **Bombay Cotton Frauds Act VII. of 1878, §§ 6 and 14.**

IMPX. *v.* KHIMCHAND NARAYAN... **I. L. Rep. 3 Bom. 384.**

—— Re-arrangement of—within British Territory.

See **Cession of Territory. 1.**

DAMODAR *v.* GANESH...**10 Bom. H. C. Rep. 37; I. L. Rep. 1 Bom. 367; L. Rep. 3 I. A. 102; L. Rep. 1 App. Ca. 332.**

Digitized by Google

JURISDICTION—*contd.*

—— Refusal by Lower Court to exercise—Ground for Exercise of Power of Superintendence by High Court.

See **Stat. 24 and 25 Vict., C. 104, § 15. 1. 3. 4.**

LUKHYKANT BOSE ..**I. L. Rep. 1 Cal. 180.**

TEJ RAM *v.* HARSUKH...**I. L. Rep. 1 All. 101.**

MATHOR PARSHAD...**Ibid. 296.**

—— Refusal of Magistrate to inquire on Ground of Want of—Order of Division Bench to Magistrate to inquire—Committal—Sentence—Power of High Court on Reference for Confirmation to consider the—of Sessions Court.

See **Criminal Procedure Code, Act X. of 1872, § 297. 7.**

EMPRESS *v.* SARMUKH SINGH...**I. L. Rep. 2 All. 218.**

—— Suit for Declaration of Zemindari Right to Cesses.

See **Declaratory Decree. 18.**

AKBAR KHAN *v.* SHEORATAN...**I. L. Rep. 1 All. 373.**

—— Suit for Dissolution of Partnership.

See **Jurisdiction. 6.**

—— Suit by Pattidar against Co-Sharers for Contribution in respect of Revenue paid for Co-Sharers.

See **Act XIX. of 1873, § 241. 1.**

RAM DIAL *v.* GULAB SING...**I. L. Rep. 1 All. 26.**

—— Summary.

See **Criminal Procedure Code, Act X. of 1872, § 56.**

PURSOORAM BOROOAH...**I. L. Rep. 2 Cal. 117.**

See **Summary Procedure. 1.**

EMPRESS *v.* ABDOOL KARIM **I. L. Rep. 4 Cal. 18.**

—— Territorial—ceases on Valid Cession.

See **Cession of Territory. 1.**

DAMODAR *v.* GANESH...**10 Bom. H. C. Rep. 37; I. L. Rep. 1 Bom. 367; L. Rep. 3 I. A. 102; L. Rep. 1 App. Ca. 332.**

JURISDICTION—*contd.*

—— Territorial—Extent of—over High Seas adjacent to Coast.

See **Jurisdiction. 10.**

—— Transfer of.

See **Cession of Territory. 1.**

DAMODAR *v.* GANESH ..**10 Bom. H. C. Rep. 37; I. L. Rep. 1 Bom. 367; L. Rep. 3 I. A. 102; L. Rep. 1 App. Ca. 332.**

—— Valuation of Suit for Purposes of.

See **Jurisdiction. 15. 19. 20.**

—— Whole Cause of Action—Place of Contract or of its Performance.

See **Jurisdiction. 14.**

MUHAMMAD ABDUL KADAR *v.* E. I. RAILWAY COMPANY...**I. L. Rep. 1 Mad. 375.**

1. —— *Municipal Tax—Suit to recover—Madras Act III. of* 1871, §§ 61, 85.] A suit was brought in the Court of the District Munsif of Gantur, to recover the amount of the profession tax, which had been levied by the Municipal Commissioners of Gantur, for 1876, under Madras Act III. of 1871, from the plaintiff, under the supposition that he carried on business as an agent, while in fact he carried on no such business.—*Held*, that the Civil Courts had no jurisdiction to adjudicate on the matter in dispute. The procedure prescribed by § 61 of Madras Act III. of 1871 for the imposition of the tax having been conformed to by the Commissioners, the tax had a legal existence, and no suit would lie to contest its incidence. KAMAYYA *v.* LEMAN. *Innes* and *Muttusami Ayyar*, JJ.....**I. L. Rep. 2 Mad. 37, 1878.**

2. —— *Civil and Revenue Courts—Act X. of* 1859, §§ 23, 24.] In districts where Act X. of 1859 is still in force, the jurisdiction of the Civil Courts can only be ousted in cases where the subject of dispute and the parties are exclusively such as are annexed to the jurisdiction of the Revenue Courts under that Act. Where, therefore, a suit was brought by a landlord against his dewan in a Civil Court which contained items of claim cognizable by the Civil Courts; *it was held*, that the suit was properly brought in such Court. KUMOOD NARAIN BHOOP *v.* PURNA CHUNDER ROY. *Jackson* and *Tottenham*, JJ...**I. L. Rep. 4 Cal. 547; 3 Cal. Rep. 258, 1878.**

Digitized by Google

JURISDICTION—*contd.*

8. —— *Dwelling—Residence—Act VIII. of* 1859, § 5—*Act XXIII. of* 1861, § 4.] The words dwelling or residence are synonymous with domicile or home, and mean that place where a person has his fixed permanent home, to which, whenever he is absent, he has the intention of returning. Where, therefore, *A.*, one of the defendants, was, at the time of the institution of a suit, a sowar in the Scinde Horse, and, with his regiment, outside the jurisdiction of the Court in which the suit was instituted, but had his family residence, in which his wife, the other defendant, was living, within the jurisdiction of the Court:—

Held, that *A.*'s family residence within the jurisdiction of the Court, the fixed and permanent home of his wife and family, and to which he had always the intention of returning, constituted his dwelling place within the meaning of § 5 of Act VIII. of 1859, and § 4 of Act XXIII. of 1861, and that the sanction of the High Court under the latter section was unnecessary for the continuance of the suit. FATIMA BEGAM *v.* SAKINA BEGAM. *Spankie* and *Oldfield*, JJ.....**I. L. Rep. 1 All 51, 1875.**

4. —— *Act VIII. of* 1859, §§ 5, 13—*Reg. VII. of* 1825—*Mortgage of Lands in different Districts—Account in Redemption Suit—Redemption of Lands within Jurisdiction.*] The plaintiffs, who were mortgagors of certain property situated partly in the district of Mirzapur, and partly in the family domains of the Maharaja of Benares, instituted a suit to redeem the same, in the Court of the Subordinate Judge of Mirzapur; but authority to try the suit in that Court in respect of the lands in the family domain having been applied for under Act VIII. of 1859, § 13, and refused by the High Court, those plaintiffs who were only interested in the mortgage to the extent of the property in the family domains withdrew, and the other plaintiffs proceeded with their claim to redeem the property in Mirzapur, and obtained a decree for possession thereof on the basis of the satisfaction of the entire debt charged on the two properties. The lower Appellate Court dismissed the suit, on the ground that the trial would raise questions affecting property in the family domains in respect of which he had no jurisdiction, instancing in this view the question whether the mortgagees were in possession of certain lands in the family domains without which the accounts could not be made up:—

JURISDICTION—*contd.*

Held, that the plaintiffs were at liberty to forego, as they had done, suing for possession of the property situated in the family domains, and the suit as now brought was only for immoveable property in the district of Mirzapur,—it did not seek to recover land in the domains, nor was there any claim raised of a nature exclusively cognizable by Courts established under Reg. VII. of 1829. The jurisdiction conferred on the Mirzapur Court by § 5 of Act VIII. of 1859 could not be ousted, because it might be necessary incidentally to decide, for the purposes of the suit, questions relating to mortgaged property held by the defendants in the family domains, the extent of it in their possession, and its profits, in order to make up the accounts of the entire mortgage, so as to ascertain if the entire mortgage debt had been satisfied, and if the plaintiff had a right to recover the property in Mirzapur. GIRDHARI *v.* SHEORAJ. *Stuart*, C.J., and *Oldfield*, J...**I. L. Rep. 1 All. 431, 1877.**

5. —— *Record-of-Rights—Act XIX. of* 1873, §§ 91, 94 *and* 241.] Section 241 of Act XIX. of 1873 enacts that no Civil Court shall exercise jurisdiction "in the matter" of the "formation of the record-of-rights;" but the matter of the formation of a record is not the same thing as the question of the rights which its entries record. The Civil Court may not alter or amend the record, or give directions in respect of it, because the formation of the record and correction of errors in it has been made, by §§ 62 and 94 of Act XIX. of 1873, a matter peculiarly within the province of the Revenue Court. That was the object with which the above-cited part of § 241 was enacted, but it was not intended to debar Civil Courts from entertaining and deciding questions of right between parties merely because those questions may have been made the subject of entries in the record, and because the decision of the Civil Court may show that they are wrong and need correction. Therefore, a claim in a Civil Court for a declaration of the right to make certain collections of rents and to defray village expenses, though such right has been made the subject of an entry in the record-of-rights adverse to the person claiming such right, was held to be maintainable. SUNDAR *v.* KHUMAN SINGH. *Spankie* and *Oldfield*, JJ.....**I. L. Rep. 1 All. 613, 1878.**

6. —— *Suit for Dissolution of Partnership—Account—Act IX. of* 1872, § 265—*Act VIII. of* 1859, § 5.] In a suit for dissolution of part-

Digitized by Google

JURISDICTION—*contd.*

nership between the plaintiff and the first defendant, the plaint alleged that the plaintiff and the first defendant entered into partnership in 1864 to work a jungle in the North Arcot district, which had been leased to the plaintiff for three years. That the fourth defendant was subsequently admitted a partner; and that the contract was carred on under the style of R. T. & Co. That in March 1867 the fourth defendant took up a contract in Madras, and another partnership was established, of which the plaintiff and first defendant were members; that the funds of the first firm were incorporated with those of the second, and that this firm undertook several contracts in Madras and Chingleput. That this partnership came to a close in 1870, and that the cause of action was the refusal of the first defendant to account, and accrued in the North Arcot District, where all the defendants permanently resided. The District Judge dismissed the suit, on the ground that under § 265 of the Contract Act (IX. of 1872) he had no jurisdiction to entertain the suit:—

Held, that the District Court of the North Arcot district had jurisdiction to entertain the suit, as the defendants were all resident within that district. The circumstance that contracts for work were made and work was done elsewhere did not affect this ground of jurisdiction. The 265th Section of Act IX. of 1872 *enables* a partner to resort to the Court within whose jurisdiction the place or principal place of business of the firm is situated for the purpose of winding up the business; but this permission, which is permissive, does not prohibit a suit elsewhere if a sufficient ground of jurisdiction exists. RAMASAMI *v.* THERUVENGADASAMI. *Morgan* C.J., and *Innes*, J...**I. L. Rep. 1 Mad. 340, 1877.**

7. —— *Foreign Judgment, Suit on.*] *A.*, a Hindu British subject, neither domiciled, resident, nor possessing property in the foreign State of Puddacottah, casually resorted thither, and there drew a bill for a sum found due to his creditor *B.*, resident in that State. *B.* sued *A.* on this bill in the Civil Court of Puddacottah, and obtained a decree. *B.* then sued *A.* in the Court of the Subordinate Judge of Madura for enforcement of this decree. *A.* pleaded that the Puddacottah Court had no jurisdiction to pass the decree sued on, and that he had had no notice of the suit. It was found, on

JURISDICTION—*contd.*

regular appeal, that *A.* had had notice, and decided that the Civil Court of Puddacottah had jurisdiction:—

Held, on special appeal, that the Civil Court of Puddacottah had no jurisdiction to try the suit. The mere making of a contract within the jurisdiction of a foreign Court does not necessarily render that Court competent to adjudicate on all the obligatory relations which flow directly or indirectly from it. MATHAPPA CHETTI *v.* CHELLAPPA CHETTI. *Morgan*, C.J., and *Holloway*, J.....**I. L. Rep. 1 Mad. 196, 1876.**

8. —— *Of Civil and Revenue Courts—Act XVIII. of* 1873, §§ 93, 95.] The plaintiffs claimed a declaration of their proprietary right in respect of certain lands and possession of the lands, alleging that the defendants were their tenants, and liable to pay rent for lands. The defendants, while admitting the proprietary right of the plaintiffs, alleged that they paid the revenue assessed on the lands, that they paid no rent, and that the plaintiffs were not entitled to rent, and they styled themselves tenants at fixed rates:—

Held, that, as the defendants substantially denied the proprietary title of the plaintiffs, and set up a title of their own, the claim of the plaintiffs for a declaration of their proprietary right, and of their right to demand rent, was a matter which the Civil Courts must decide, leaving the plaintiffs to sue in the Revenue Court to eject the defendants, and to recover rent, if the possession of the defendants as tenants were established. KANAHIA *v.* RAM KISHEN. *Spankie* and *Oldfield*, JJ.....**I. L. Rep. 2 All. 429, 1879.**

9. —— *Of the District Court of Akyab—Act X. of* 1877, *Chap. XX.—Insolvency—Burmah Courts Act XVII. of* 1875, §§ 31, 66.] The Deputy Commissioner of Akyab, sitting as a District Judge, has power to entertain applications under Chapter XX. of Act X. of 1877.

Section 6 (*d*) of that Act imposes no obstacle in the way of the Deputy Commissioner dealing with such applications, nor does the exercise of such power in any way "affect the jurisdiction of the Recorder of Rangoon sitting as an Insolvent Court in Akyab" within the meaning of that section. *In re* ABDOOL HAMED. *Markby* and *Prinsep*, JJ...**I. L. Rep. 4 Cal. 94; 2 Cal. Rep. 485, 1878.**

Digitized by Google

JURISDICTION—*contd.*

—— *Fishery—Right of Fishing in the Sea—Act VIII. of* 1859, § 5.] The District Court has jurisdiction, when the defendants reside within its local jurisdiction, to entertain a suit for damages for, and to restrain by injunction, an alleged disturbance of the plaintiff's right to fish and use fishing stakes and nets fixed in the sea below low-water mark within three miles of it. BABAN MAYACHA *v.* NAGU SHRIMACHA. *Westropp*, C.J., and *N. Harridas*, J .....**I. L. Rep. 2 Bom. 19, 1876.**

11. —— *Appeal—Sonthal Pergannas—Act XXXVII. of* 1855, §§ 2, 4—*Act XVI. of* 1874—*Act XV. of* 1874.] The High Court of Calcutta has no jurisdiction to entertain appeals in Civil suits tried in the Sonthal Pergannas. SURDHAREE LOLL *v.* MANSOOR ALLY KHAN. *Jackson* and *White*, JJ...**I. L. Rep. 3 Cal. 298, 1877.**

12. —— *Cause of Action—Goods obtained by Offence or Fraud—Contract Act IX. of* 1872, § 178—*Bailment — Pawnor and Pawnee.*] *G.* went to the plaintiff's place of business in Calcutta, and representing to him that he wanted some jewellery on inspection, and would purchase it if he did not return within ten days, obtained from the plaintiff a quantity of jewellery, depositing as security Rs. 2,000 with the plaintiff. *G.*, having thus obtained the jewellery, took it to *K.*, at his residence, which was outside the local limits of the jurisdiction of the Court, and representing to *K.*, that the jewels were his own, pledged them with *K.* for Rs. 6,000. In a suit brought against *G.* and *K.* to recover the jewellery, or its value, *G.* did not appear, and *K.* alone defended the suit:—

Held, that, leave to sue having been obtained, the High Court had jurisdiction to entertain the suit. Having reference to § 178 of the Contract Act IX. of 1872, it was an essential element in the plaintiff's case, that the jewellery had been obtained from him by means of an offence or fraud in Calcutta. Part of the plaintiff's cause of action, therefore, arose in Calcutta. *Held* also, that the plaintiff was entitled to recover the jewellery from *K.*, under § 178 of the Contract Act IX. of 1872, *G.* having obtained it from the plaintiff by an offence or fraud within the meaning of that section. KARTIK CHURN SETTY *v.* GOPALKRISTO PAULIT. *Macpherson*, J...**I. L. Rep. 3 Cal. 264, 1877.**

13. —— *Suit against Collector of Sea Customs at Madras—Jurisdiction of High Court at Madras, and Civil Court at Chingleput—Madras Reg. IX. of* 1803, § 55—*Act VI. of* 1844—*Act VI. of* 1863—*Letters Patent—Construction of Acts* in Pari Materiâ.] Madras Reg. IX. of 1803 provided by § 55 that Custom House officers should be amenable to the Civil Court at Chingleput for acts done in their official capacity "contrary to or not warranted by this Regulation." This Regulation was repealed by Act VI. of 1844, §§ 55 to 70 being left standing; but nothing remained as to which the words "contrary to or not warranted by this Regulation" could be operative. Act VI. of 1844 was repealed by Act VI. of 1863, and, the revival of provisions of the law previously repealed by the enactments which that Act repealed being expressly provided for, what remained of Reg. IX. of 1803 was left unaffected by Act. VI. of 1863. That Act contains no reference to Reg. IX. of 1803, but as it is the general Customs law, and therefore part of the same system of laws, it may be regarded as *in pari materiâ* with the old Regulation, and construed with it. The Court of Chingleput, therefore, still has jurisdiction in respect of suits brought against Custom House officers for acts done by them *ultra vires* in their official capacity.

But that Regulation never had, and could not have, the effect of excluding the jurisdiction of the late Supreme Court, and the provision in the old Charter exempting matters concerning the revenue from the jurisdiction of the Supreme Court being no longer in force, the existence of jurisdiction over such cases in the Court of Chingleput is quite consistent with there being a concurrent jurisdiction in the High Court.

Though the clause 23 of the Charter of the late Supreme Court, which must be read as if it had followed the Stat. 39 and 40 Geo. III., C. 79, and limited the exemption from the jurisdiction of the High Court to matters concerning the revenue, or acts done or ordered in the collection thereof, is not expressly repealed, yet the old statute and charter, and the new statute 24 and 25 Vict., C. 104, authorizing the erection of High Courts, and the Letters Patent published in pursuance thereof, are legislative provisions *in pari materiâ*; and the true rule of construction is to read them as one statute, and only to regard such parts of the old statute and charter as repealed by the new as cannot consistently stand with the new. And though mere general words, such as those in Cl. 12 of the new

Digitized by Google

JURISDICTION—*contd.*

Letters Patent, standing alone, would be subject to the control of a special exemption, such as that contained in the language of the old charter, yet, having regard to the provisions of § 9, Stat. 24 and 25 Vict., C. 104, and Cl. 13 of the Letters Patent, the assumption of the continued operation of the exceptive provisions of the old charter as regards matters connected with the revenue, draws with it such a train of inconsistencies, that it must be inferred that those provisions have ceased to be operative, and the High Court at Madras has jurisdiction to entertain such suits.

Stat. 53, Geo. III., C. 155, §§ 98, 99 and 100, however, did not touch the exemptions as to revenue jurisdiction, which continued in force until the present charter became operative.

Held by Kernan, J.—That the exception of matters relating to revenue, &c., from the jurisdiction of the Supreme Court, was the result of a state of circumstances and of reasons which had ceased to exist in 1858 on the passing of Stat. 21 and 22 Vict., C. 106, transferring the Government of India to the Crown The continuance of such exception became then unnecessary and useless, and therefore cannot be imported into the Stat. 24 and 25 Vict., C. 104, and the Letters Patent of 1865, by implication or construction. Such exception is also inconsistent with the provisions of Stat. 24 and 25 Vict., C. 104, and the charter granted under it. The exception, too, was repealed, save, perhaps, as to land revenue by the Stat. 53, Geo. III., C. 155, §§ 99, 100.

Held by Morgan, C.J.—The Collector of Sea Customs having been, prior to the establishment of the High Court, excepted from the jurisdiction of the Supreme Court by the combined effect of the charter of that Court and Reg. IX. of 1803, and made subject by a special law to another jurisdiction, the Stat. 24 and 25 Vict., C. 104, § 9, provides that the High Court to be established in each Presidency shall have and exercise all jurisdiction vested in the abolished Courts of each Presidency, *save as by the Letters Patent may be otherwise directed.* Unless, therefore, by the Letters Patent, jurisdiction over officers of the Custom House for acts done by them in matters concerning the revenue has been created, it does not exist. The establishment of the new Courts and the definition of their jurisdiction is the object both of the Stat. 24 and 25 Vict., C. 104, and the

JURISDICTION—*contd.*

Letters Patent, and the sections of the Letters Patent (Madras) (§§ 18 to 20), which ordain what law shall be administered by the High Court in civil cases, do in effect preserve the old laws and tribunals respectively for the cases which would previously have been governed by them. A suit, therefore, against the Collector of Sea Customs for an act done in his official capacity, and in execution of his office in a matter concerning the revenue, though not in conformity to law, is not cognizable by the High Court of Madras. COLLECTOR OF SEA CUSTOMS, MADRAS, *v.* PUNNIAR CHITHAMBARAM...

I. L. Rep. 1 Mad. 89, 1876.

S. C. under **Act XVIII. of 1850. 2,** and **Res Judicata. 31.**

14. —— *Letters Patent (Madras), Cl. 12—Whole Cause of Action—Contract — Breach.*] The plaintiffs, at Cawnpore, contracted with the defendants, the East Indian Railway Company, for the carriage and delivery of certain goods at Madras. The defendant's Railway Company does not run into the jurisdiction of the High Court at Madras. The Railway Company made default in delivery of the goods at Madras ; and the plaintiffs, without having obtained leave to sue under Cl. 12 of the Letters Patent, sued the defendants in the High Court of Madras for damages for the breach of contract :—

Held, following *Gopi Krishna Gossami* v. *Nilkomul Bannerjee* (13 Beng. L. Rep. 461) and *Vaughan* v. *Weldon* (L. Rep. 10 C. P. 47), that the breach of contract having taken place at Madras, the cause of action had wholly arisen within the jurisdiction of the High Court. The cause of action wholly arises either in the place of the making of the contract, or at the place of its performance.

Per Kernan, J.—Clause 12 of the Letters Patent applies to cases where the cause of action arises partly out of the jurisdiction, *eg.*, if the contract of the company in this case had been to deliver a portion of the goods at Arconum, outside the jurisdiction, and a portion in Madras, and if the action had been brought alleging as a breach non-delivery at both places.

Per Kindersley, J.—The words " wholly or in part" in Cl. 12 relate to cases of several causes of action contained in the same suit, some of which have arisen out of the jurisdiction. MUHAMMAD ABDUL KADAR *v.* THE E. I. RY. CO....

I. L. Rep. 1 Mad. 375, 1878.

Digitized by Google

JURISDICTION—*contd.*

15. —— *Subordinate Judge—Suit to redeem Usufructuary Mortgage—Subject-matter of Suit—Court Fees Act VII. of* 1870.] In a suit instituted in the Munsiff's Court for "complete" possession of certain lands by redemption of a usufructuary mortgage and ejectment of the defendants, valued at Rs. 150, the principal sum secured by the mortgage, the defendants denied the mortgage and set up a proprietary title to the lands. The Munsiff returned the plaint to the plaintiff for presentation to the proper Court, holding that, having regard to the nature of the defence, the suit must be regarded as one to recover possession of land, and the value thereof being more than Rs. 1,000 he had no jurisdiction to entertain the suit:—

Held, that such decision was right. The question was not one of institution fee but of jurisdiction; and the subject-matter of dispute was not only whether the property had been redeemed by payment of the debt out of the usufruct, but whether the property and the right to redeem belonged to the plaintiffs; and the value of the property having been found to exceed Rs. 1,000, the suit was rightly held not to be cognizable by the Munsiff. KALIANDAS *v.* NAWAL SINGH. *Pearson* and *Spankie*, JJ... **I. L. Rep. 1 All. 620, 1878.**

S. C. under **Appeal—Civil. 26.**

16. —— *Act X. of* 1872, §§ 231, 471, 472—*Power of Sessions Judge to commit to himself Cases not triable exclusively by Court of Session.*] A Sessions Judge committed an accused person for trial before the Sessions Court on a charge of having given false evidence in a trial held in the Court of Session, having himself held the preliminary inquiry into the case:—

Held, that the commitment must be quashed. It is only in cases triable exclusively by the Court of Sessions, that the Judge is empowered to commit or hold to bail and try an accused person charged with the offences mentioned in §§ 467, 468, and 469. In cases of a like nature which are not triable by the Court of Sessions exclusively, all that the Judge is empowered to do is to send the case for inquiry to any Magistrate having power to try or commit for trial the accused person under § 471.

The words "commit the case itself" occurring in § 471, do not (when read in connection with § 231) mean that the Court of Sessions may

JURISDICTION—*contd.*

commit the case to itself. EMPRESS *v.* FUTTEH JYAB KHAN. *Birch* and *Mitter*, JJ...**I. L. Rep. 4 Cal. 570, 1879.**

16a. —— *Sessions Judge Power of to commit—Penal Code*, §§ 109, 193, 198, 211, 218—*Charges—Power of High Court as a Court of Revision—Criminal Procedure Code, Act X. of* 1872, §§ 297, 472] *L.* made a complaint by petition against *S.*, which was headed under §§ 193 and 218 of the Penal Code, but in the body of it contained accusations against *S.* which, if true, would have amounted to an offence punishable, under § 466 of the Penal Code, with seven years' imprisonment. The Magistrate inquired into the charges against *S.* under §§ 193 and 218 of the Penal Code, and discharged him. *L.* then applied to the Court of Session to direct the committal of *S.* for trial, on the ground that he had been improperly discharged. The Court of Session, accordingly, directed the committal of *S.*, and *S.* was committed for trial charged under § 218 of the Penal Code, and acquitted by the Sessions Court. The Court of Session then, under § 472 of the Criminal Procedure Code, Act X. of 1872, charged *L.* with offences under §§ 193, 195, 211, and 109 of the Penal Code, and committed him for trial:—

Held by *Stuart*, C.J.—That the commitment was valid. If the charge on which the order of commitment was made related exclusively to § 193 of the Penal Code, the commitment might have been bad, inasmuch as an offence under that section is not triable exclusively by a Court of Session. But in the present case the order of the Sessions Judge for commitment, not only directed a charge under § 193, but also two other charges of greater magnitude under §§ 195 and 211, the offences defined in which being exclusively triable by a Court of Session, a commitment on them necessarily carried with it and involved the right to inquire into and try the offence under § 193.

Held also, that the High Court as a Court of Revision has power to quash an order of commitment made by a Court of Session, under § 472 of the Criminal Procedure Code, Act X. of 1872, the power given to the High Court under § 197 of that Code to quash a commitment by a competent Magistrate not being intended in an exclusive sense, or depriving the High Court of its large powers under § 472.

Spankie, J., doubted whether the High Court could cancel a commitment made by a Sessions

Digitized by Google

JURISDICTION—*contd.*

Judge under § 472 of the Criminal Procedure Code, Act X. of 1872, no express power to do so having been granted, while there was a provision by which a commitment made by a competent Magistrate could be quashed (§ 197). If the commitment had been made solely on a charge under § 193 of the Penal Code, of giving false evidence, the charge would not have been one triable exclusively by a Court of Session, and then, though the power of the High Court to quash the commitment *before* trial was doubtful, there would be no doubt of the power of the High Court to do so *after* trial, either on appeal or revision.

Held also, that the commitment was good. The Court of Session having ordered the commitment on charges under §§ 195 and 211 of the Penal Code, which were exclusively triable by the Court of Session, there was no illegality in adding the other charge. EMPRESS *v.* LACHMAN SINGH.....**I. L. Rep. 2 All. 398.**

17. —— *Act X. of* 1872, § 64—*Transfer of Case—Burmah Courts Act XVII. of* 1875, § 35.] The Special Court at Burmah has power to entertain an appeal from a sentence of death, or other sentence passed by the Judicial Commissioner, in a case transferred by him to his own Court from that of the Sessions Judge, under the powers conferred by § 64 of Act X. of 1872, and § 35 of Act XVII. of 1875, the hearing subsequent to the transfer being an exercise of original jurisdiction on the part of the Judicial Commissioner. EMPRESS *v.* TSIT OOE. *Garth*, C.J., *Jackson* and *McDonnell*, JJ .. **I. L. Rep. 4 Cal. 667, 1878.**

18. —— *Municipal Commissioner — Suit against Collector—Public Capacity—Bombay Act VI. of* 1873, § 86—*Notice of Action.*] When the acts complained of by the plaintiff were committed before Bombay Act VI. of 1873 came into force, by the Collector of the District as President, and by the members of a Municipality, appointed Municipal Commissioners under Act XXVI. of 1850:—

Held, in a suit instituted on 4th December 1874 in the Court of a Subordinate Judge, 1st Class, that § 86 of Bombay Act VI. of 1873 did not apply, and that notice of action was not necessary.

JURISDICTION—*contd.*

Held also, that the Collector was, in his official capacity of District Magistrate, a member of the Municipality, under § 6 of Act XXVI. of 1850, and therefore that the Subordinate Judge had no jurisdiction, but that the suit ought to be tried by the District Judge. GANGADHAR SHIVKARN *v.* THE COLLECTOR OF AHMMEDNAGAR. *Westropp*, C.J., and *N. Harridas*, J...**I. L. Rep. 1 Bom. 628, 1877.**

19. —— *Court Fees Act VII. of* 1870, § 4, *Schedule* II., *Art.* 17, *Cl.* 3 *and* 6—*Valuation of Suit—Act XIV. of* 1869, § 24—*Return of Plaint.*] A Subordinate Judge of the 2nd class has no jurisdiction to entertain a suit for a declaration of the plaintiff's right to inherit the property of a deceased person, when the value of that property exceeds Rs. 5,000.

Whether the suit be merely for a decree declaratory of title to, or whether it be to establish title coupled with a prayer for possession of, the rights of the deceased person, *the inheritance* is the subject-matter in dispute within the meaning of Act XIV. of 1869, § 24; and the actual value of the estate to which the plaintiff claims to be entitled, and not the value which it may eventually represent to the plaintiffs, after payment of debts and legacies, is the value of the subject-matter for the purposes of jurisdiction.

The Court Fees Act VII. of 1870 cannot be used as a guide in ascertaining value for the purposes of jurisdiction. The law may well lay down for purposes of revenue certain fixed rules for the valuation of suits; but that valuation cannot be accepted as a criterion of a matter of fact, such as the actual amount or value of a claim, on which the jurisdiction of a Court depends.

Where the Appellate Court decides that the lower Court had no jurisdiction to entertain the suit, it should return the plaint to the plaintiff, in order that it may be presented to the proper Court. BAI MAKHOR *v.* BULAKHI CHAKU. *Kemball* and *N. Harridas*, JJ...**I. L. Rep. 1 Bom. 1 538, 1874.**

20. —— *Valuation of Suit—Subject-matter.*] For the purpose of determining the question of jurisdiction, the valuation of the suit should be computed according to the market value of the subject-matter of the suit, and not according to the special rules applicable to valuation fixed in Act VII. of 1870. KALU

Digitized by Google

JURISDICTION—*contd.*

BHIWAJI *v.* VISHRAM MAWAJI. *Westropp*, C.J., and *N. Harridas*, J...**I. L. Rep. 1 Bom. 543, 1877.**

JURISDICTION OF DISTRICT JUDGE.

Appeal — Value of Subject-matter in Dispute.

See **Bengal Civil Courts Act VI. of 1871, § 22.**

KALI CHARAN RAI *v.* AJUDHIA RAI...**I. L. Rep. 2 All. 148.**

—— Appeal in Suit for Rent less than Rs. 100—Question of Proprietary Title.

See **Act XVIII. of 1873, § 93. 3.**

BISHESHUR SINGH *v.* MUSST. SUGUNDHI.....**I. L. Rep. 1 All. 366.**

——High Seas.

See **Jurisdiction. 10.**

—— Municipality—Suit against.

See **Suit against a Municipality.**

THE AHMEDABAD MUNICIPALITY *v.* MAHAMAD JAMAL .... **I. L. Rep. 3 Bom. 146.**

JURISDICTION OF HIGH COURT—

Appeals from Sonthal Pergannas.

See **Jurisdiction. 11.**

—— Goods obtained by Offence or Fraud within—pledged to Defendant residing without—Leave to sue.

See **Jurisdiction. 12.**

—— To Imprison for Contempt.

See **Imprisonment for Contempt.**

MARTIN *v.* LAWRENCE...**I. L. Rep. 4 Cal. 655.**

—— In Matters relating to Revenue—Suit against Collector of Sea Customs at Madras.

See **Jurisdiction. 13.**

—— Offence committed at Cyprus.

See **Offence committed at Cyprus.**

EMPRESS *v.* SARMUKH SINGH... **I. L. Rep. 2 All. 218.**

—— Offence committed by British Subject at Zanzibar.

See **Offence committed in Foreign Territory.**

EMPRESS *v.* DOSSAJI GULAM HUSSEIN.....**I. L. Rep. 3 Bom. 334.**

JURISDICTION OF HIGH COURT—*contd.*

—— Power of the Legislature to effect.

See **Act VI. of 1874, § 5.**

FEDA HOSSEIN...**I. L. Rep. 1 Cal. 431.**

See **Legislative Power of the Governor General in Council. 1. 2.**

EMPRESS *v.* BURRAH...**I. L. Rep. 3 Cal. 63; I. L. Rep. 4 Cal. 172; L. Rep. 5 I. A. 178; L. Rep. 3 App. Ca. 889.**

—— Over Small Cause Court.

See **Small Cause Court—Presidency Town. 5.**

In the matter of OMRITOLALL DEY... **I. L. Rep. 1 Cal. 78.**

—— Suit by Creditor to have Trusts carried out of Deed of Trust giving Trustees Power to sell Lands in Mofussil.

See **Suit for Land. 2.**

DELHI & LONDON BANK *v.* WORDEI...**I. L. Rep. 1 Cal. 249.**

—— Suit for Land—Suit for Injunction to restrain Working Mines on Defendant's Land—Disputed Boundaries.

See **Suit for Land. 1.**

E. I. RY. CO. *v.* BENGAL COAL CO. **I. L. Rep. 1 Cal. 95.**

—— Whole cause of Action—Contract to deliver Goods in Madras.

See **Jurisdiction. 14.**

JURISDICTION OF MAGISTRATE OF THE DISTRICT—To call for Proceedings in case of Discharge by Subordinate Magistrate.

See **Rivival of Prosecution, § 5.**

IMPX. *v.* GAUDAPA...**I. L. Rep. 2 Bom. 534.**

—— To Order Re-trial.

See **Revival of Prosecution. 5.**

IMPX. *v.* GAUDAPA...**I. L. Rep. 2 Bom. 534.**

See **Criminal Procedure Code, Act X. of 1872, § 295. 1.**

DIJAHUR DUTT.....**I. L. Rep. 4 Cal. 647.**

Digitized by Google

JURISDICTION OF MAGISTRATE OF THE DISTRICT—*contd.*

—— To Proceed without Complaint, where Prosecutor has not availed himself of a Sanction to prosecute.

See **Criminal Procedure Code, Act X. of 1872, § 142. 1.**

EMPRESS *v.* NIPCHA...**I. L. Rep. 4 Cal. 712.**

JURISDICTION OF MAGISTRATES IN MADRAS PRESIDENCY IN RESPECT OF OFFENCES AGAINST SPECIAL OR LOCAL LAWS.

See **Madras Act III. of 1865.**

REG. *v.* KANDAKARA...**I. L. Rep. 1 Mad. 223.**

See **Jurisdiction 15.**

JURISDICTION OF REVENUE COURTS.

See the Index heading **Jurisdiction of Civil and Revenue Courts.**

—— Claim arising out of or connected with Collection of Revenue—Suit for Contribution.

See **Act XIX. of 1873, § 241.**

RAM DIAL *v.* GULAB SINGH...**I. L. Rep. 1 All. 26.**

—— To decide Questions of Title in Applications under Act XVIII. of 1873.

See **Res Judicata, 15.**

SHIMBHU NARAIN SINGH *v.* BACHCHA...**I. L. Rep. 2 All. 200.**

—— Suit by Co-Sharer in a Mahal against Heir of Deceased Lambardar for Share of Profits collected by Deceased.

See **Act XVIII. of 1873, § 93. 2.**

BHIKAN KHAN *v.* RATAN KUAR... **I. L. Rep. 1 All. 512.**

—— In Suits for Money Equivalent of Arrears of Grain Rent.

See **Act XVIII. of 1873, § 93. 1.**

TAJUDDIN KHAN *v.* RAM PARSHAD BHAGAT...**I. L. Rep. 1 All. 217.**

—— Wrongful Dispossession of Lessee by Lessor.

See **Act XVIII. of 1873, § 95, Cl. m. 1.**

ABDUL AZIZ *v.* WALI KHAN... **I. L. Rep. 1 All. 338.**

JURISDICTION—SESSIONS JUDGE— To commit to himself Case not triable exclusively by Court of Sessions.

See **Jurisdiction. 16. 16a.**

JURISDICTION OF SMALL CAUSE COURTS — MOFUSSIL.— Suit for Arrears of Rent (less than Rs. 500) at Enhanced Rate—not within.

See **Small Cause Court—Mofussil. 5.**

BABSHETTI *v.* VENKATARAMANA... **I. L. Rep. 3 Bom. 154.**

—— Suit for Balance (less than Rs. 500) due on account of Rents collected from Plaintiff's Zemindaries by Defendant's Father as Plaintiff's Agent is within.

See **Small Cause Court—Mofussil. 7.**

DYEBUKEE MUNDUN *v.* MUDHOO MUTTY...**I. L. Rep. 1 Cal. 123.**

—— Suit for *Baluta Haks* (less than Rs. 500) is within.

See **Baluta.**

NARU *v.* NARO.....**I. L. Rep. 3 Bom. 28.**

—— Suit for *Hug-i-Chaharun* or other Zemindari Cesses is not within.

See **Small Cause Court—Mofussil. 4.**

MANKU *v.* BOARD OF REVENUE... **I. L. Rep. 1 All. 444.**

—— Suit for Maintenance of Hindu Widow in Absence of Bond or Special Contract is not within.

See **Small Cause Court—Mofussil. 1. 2.**

APAJI *v.* GANGABAI...**I. L. Rep. 2 Bom. 632.**

SIDLINGAPA *v.* SIDAVA.....**Ibid. 624.**

—— Suit against a Municipality is not within.

See **Suit against a Municipality. 1.**

AHMEDABAD MUNICIPALITY *v.* MAHAMAD JAMAL...**I. L. Rep. 3 Bom. 146.**

—— Suit to recover Money (less than Rs. 500) paid to prevent Sale of Tenure is within.

See **Small Cause Court—Mofussil. 6.**

KRISHNA K. SAHA *v.* BIRESHUR MOZOOMDAR...**I. L. Rep. 4 Cal. 595.**

Digitized by Google

JURISDICTION OF SMALL CAUSE COURTS—MOFUSSIL—*contd.*

—— Suit to recover Moveable Property less than Rs. 500, attached in Execution of Decree, is within.

See **Small Cause Court—Mofussil. 3.**

NATHU *v.* KALIDAS...**I. L. Rep. 2 Bom. 365.**

—— Suit for Value of Crops illegally distrained is not.

See **Beng. Act VIII. of 1869, § 93. 1.**

HYDER ALI *v.* JAFAR ALI...**I. L. Rep. 1 Cal. 183.**

—— To determine Question of Title in Suit for Rent.

See **Res Judicata. 8.**

INAYAT KHAN *v.* RAHIMAT KHAN. **I. L. Rep. 2 All. 97.**

JURISDICTION OF SMALL CAUSE COURTS—PRESIDENCY TOWNS—To try Questions of Title to Immoveable Property.

See **Small Cause Court—Presidency Town. 2. 3.**

NOWLA OOMA *v.* BALA DHURMAJI. **I. L. Rep. 2 Bom. 91.**

WALJI KARIMJI *v.* JAGGANATH PREMJI...**I. L. Rep. 2 Bom. 84.**

JURISDICTION OF THE SPECIAL COURT AT RANGOON.

See **Jurisdiction. 17.**

JURISDICTION OF SUBORDINATE JUDGE—Municipality—Suit against.

See **Suit against a Municipality. 1.**

THE AHMEDABAD MUNICIPALITY *v.* MAHAMAD JAMAL .....**I. L. Rep. 3 Bom. 146.**

—— Suit to Redeem Mortgage—Denial of Mortgage—Value of Land exceeding Rs. 1,000—Suit within the.

See **Jurisdiction. 15.**

KALIAN DAS *v.* NAWAL SINGH... **I. L. Rep. 1 All. 630.**

JURISDICTION OF SUBORDINATE JUDGE, 1st CLASS—Collector, Suit against.

See **Jurisdiction. 18.**

GANGADHAR *v.* COLLECTOR OF AHMEDNAGAR...**I. L. Rep. 1 Bom. 628.**

JURISDICTION OF SUBORDINATE JUDGE, 2nd CLASS.

See **Jurisdiction. 19. 20.**

JURY—Acquittal by—Appeal.

See the Index headings **Acquittal** and **Appeal—Criminal.**

—— Certificate by.

See **Certificate of Jury. 1.**

REG. *v.* HURRIBOLE CHUNDER GHOSE ... **I. L. Rep. 1 Cal. 207, 219, n.**

—— Constitution of.

See **High Court Criminal Procedure Code, Act X. of 1875, §§ 32 to 39. 1. 2.**

REG. *v.* LALUBHA...**I. L. Rep. 1 Bom. 232.**

REG. *v.* VITHALDAS...**Ibid. 462.**

—— Trial by—of Offence triable with Assessors.

See **Trial by Jury. 1.**

EMPRESS *v.* MOHIM CHUNDER RAI. **I. L. Rep. 3 Cal. 765.**

JYOTISHI WATAN—Right to Share in—Suit for Declaration of.

See **Pensions Act XXIII. of 1871, § 4.**

BABAJI *v.* RAJARAM...**I. L. Rep. 1 Bom. 75.**

KABULAYATDAR KHOT—Dharekaris—*Occupant—Bombay Act I. of* 1865 § 2, *Cl.* j, k, *and* l, *and* § 48—*Reg. XVII. of* 1827, § 3, *Cl.* 1 —*Inferior and Superior Holder — Privity of Estate.*] The plaintiff sued as *kabulayatdar khot* to recover from the defendant the Government assessment on some land cultivated by the defendant as mortgagee in possession, the mortgagor who was the "occupant" having failed to pay it. The land remained in the Government books entered in the name of the mortgagor as occupant.

Held, that the plaintiff was entitled to recover the amount of the assessment from the defendant; for though the mortgagor, being the occu-

Digitized by Google

KABULAYATDAR KHOT—*contd.*

pant, according to Bombay Act I. of 1865, was responsible for the assessment, yet he was not *solely* responsible.

Regulation XVII. of 1827, § 5, enables the Government, and therefore the holder of the rights of Government, on failure of the superior holder to pay the revenue, to realize it from the inferior holder, a position which, in the sense of the Regulation, was held by the mortgagee, the defendant. The laws for realizing the land revenue establish a kind of privity of estate between the superior and inferior holder, by which the latter, taking the profits of the land, must satisfy the obligations of the former to Government, independently of, and even in opposition to, any agreement between the two contracting parties. This liability adheres to the occupation and enjoyment, and cannot be got rid of, except through its resignation by the Sovereign or the Sovereign's representatives. KRISHNAJI RAVJI GODBOLE *v.* RAMCHANDRA SADASHIV. *West* and *N. Harridas*, JJ.....**I. L. Rep. 1 Bom. 70, 1875.**

KABULAYAT—Suit for—by one Co-Sharer of Land.

See **Co-Sharers of Land. 1.**

GUNI MAHOMED *v.* MORAN...**I. L. Rep. 4 Cal. 96.**

—— Suit for—False Defence—Over-Estimate of Rent by Plaintiff.

See **Suit for Kabulayat. 2.**

BROJO KISHORE SINGH *v.* BHARRUT SINGH...**I. L. Rep. 4 Cal. 963.**

—— Suit for—Presumption of Landlord's Willingness to grant—*Pottah*—Tender.

See **Suit for Kabulayat. 1.**

GOGON MANJY *v.* KASHIWARI DEBY. **I. L. Rep. 3 Cal. 498.**

KANAM MORTGAGE — *Otti Mortgage — Time of Redemption.*] *Per Curiam.*—It is now settled law that in the case of Kanam and Otti mortgages it is not competent to the mortgagors to redeem before the arrival of the specified time.

Per Innes, J., dissenting from *Mashoob Ameen Sussada* v. *Marem Reddy* (8 Mad. H. C. Rep. 31).—If in the case of any mortgage the period for redemption is postponed to a fixed date by special agreement, effect should be given to such

KANAM MORTGAGE—*contd.*

agreement. KESHAVA *v.* KESHAVA. *Morgan*, C.J., and *Innes*, J.....**I. L. Rep. 2 Mad. 45, 1877.**

KANARA—Land Tenures in.

See **Land Tenures in Kanara.**

BHASKARAPPA *v.* COLLECTOR OF KANARA...**I. L. Rep. 3 Bom. 452.**

KARANAVAN—Removal of—from Office.

See **Malabar Law. 2.**

ERAVANI *v.* ITTAPU...**I. L. Rep. 1 Mad. 153.**

—— Right of—to revoke Authority to Anandravan to manage Tarwad Property.

See **Malabar Law. 3.**

GOVINDAN *v.* KANNARAN...**I. L. Rep. 1 Mad. 351.**

KAZI—*Hereditary Kazi—Appointment to and Qualifications for that Office.*] The enactment of Bombay Regulation XXVI. of 1827 seems to have been adverse to any supposition that the office of Kazi could be hereditary. That enactment was repealed by Act XI. of 1864, but that repeal leaves the law as it stood before Reg. XXVI. of 1827 was passed.

The Mahomedan law does not regard the office of Kazi as hereditary, or sanction the grant of such an office to a man and his heirs. The appointment of Kazi lies exclusively with the Sovereign or other chief executive officer of the State, and should be exercised with the greatest circumspection with reference to the fitness of the individual appointed.

The Sovereign may have full power to make the *vatan* atttached to the office of Kazi hereditary, though he cannot, under the Mahomedan law, make the office itself of Kazi hereditary. *Quære*, whether a local custom to enjoy the office of Kazi hereditarily would be valid. JAMAL AHMED *v.* JAMAL JALLAL. *Westropp*, C.J., and *Melvill*, J.....**I. L. Rep. 1 Bom. 633, 1877.**

2. —— *Mahomedan Law—Hereditary Kazi—Reg. XXVI. of 1827 — Act XI. of 1864.*] Where a *sanad* granted by the Emperor Aurungzib in A. D. 1693 did not purport to confer an hereditary *Kazishíp*, but was a grant of the office of *Kazi*, personally, to an ancestor of the plaintiff;—*Held*, that the subsequent recognition or appointment of members of the same

Digitized by Google

KAZI—*contd.*

family as *Kasis* by native governments did not prove that the office was or could be made hereditary.

Regulation XXVI. of 1827, relating to the appointment of *Kasis*, was repealed by Act XI. of 1864, whereby it is recited that it is inexpedient that the appointment of *Kasi* should be made by Government. The continuance by the Collector, therefore, of an allowance to the plaintiff in 1867, could not be regarded as a constructive appointment of him to be *Kasi*. *Jamal Ahmed* v. *Jamal Jallal* (I. L. Rep. 1 Bom. 633) followed.

Quære, whether a local custom that a *Kazishiþ* should be hereditary, would, having regard to the Mahomedan law, be valid. DAUDSHA v. ISMAILSHA. *Westropp*, C.J., and *Kemball*, J...I. L. Rep. 3 Bom. 72, 1878.

KHOJAS—*Inheritance—Custom—Evidence—Burden of Proof.*] The widow of a Khoja Mahomedan who has died childless and intestate succeeds to her husband's estate in preference to his sister. In the absence of proof of a special custom to the contrary, Hindu law regulates the succession to property amongst Khojas, and the burden of proving such special custom lies on the party asserting it.

In order to prove a custom of inheritance among Khoja Mahomedans, at variance with the rules of Hindu law, evidence of the opinions merely of the leading members of the community is not sufficient. Instances must be proved in which the alleged custom has been observed and followed. *Hirbai* v. *Gorbai* (12 Bom. H. C. Rep. 294) observed upon. RAHIMATBAI v. HIRBAI. *Westropp*, C.J., and *Green*, J ..I. L. Rep. 3 Bom. 34, 1878.

KHOT—Entry of Names of Tenants of—as Occupants in Survey Register.

See **Entry of Names of Tenants of a Khot in the Revenue Survey Register as Occupants.**

D. R. BAM v. THE SURVEY COMMISSIONER OF RUTNAGIRI ... I. L. Rep. 3 Bom. 134.

—— Kabulayatdar.

See **Kabulayatdar Khot.**

KRISHNAJI v. CHANDRA...I. L. Rep. 1 Bom. 70.

KHUD-KASHT—Lands in a Mahal held by Lambardar—at a Nominal Rental.

See **Liability of a Lambardar to Co-Sharers for Profits.**

MANGAL KHAN v. MUMTAZ ALI.....I. L. Rep. 2 All. 239.

KIDNAPPING—Abetment of.

See **Abetment. 4.**

REG. v. SAMIA KAUNDA...I. L. Rep. 1 Mad. 173.

——*Minor Girl — Guardianship — Penal Code*, § 361.] A minor girl, ten years of age, who was living with her husband and mother-in-law, was sent out to collect and sell cow-dung cakes. As she was returning home the accused detained her at his house and took her away, intending to go to a different place with her. Accused was convicted of kidnapping a minor from lawful guardianship.

On appeal, *held*, confirming the conviction, that the fact of the accused not inquiring, at the time of removing the minor from lawful guardianship, whether she had a guardian or not, was no excuse ; for by not inquiring he took the risk on himself, and could not escape the legal consequences. A child of such tender age is, *primâ facie*, subject to guardianship, and no one is at liberty to take away such child without permission properly obtained. EMPRESS v. UMSAD BAKSH. *West* and *Pinhey*, JJ...I. L. Rep. 3 Bom. 178, 1878.

KISTBANDI—*Suit on — Acknowledgment of Barred Decree—Limitation Act XIV. of* 1859, § 4—*Contract Act IX. of* 1872, § 25, *Cl.* 3—*Consideration.*] On the 31st May 1858, *A.* obtained a money decree against *B.*, but did not apply for execution till 1864, when *B.* objected to the application, on the ground that it was barred by limitation. Pending the decision of the objection, *B.*, under an arrangement with *A.*, presented a petition to the Court, in which she acknowledged a certain amount of principal and interest to be due, and executed a Kistbandi, agreeing to pay the amount by monthly instalments. *B.* paid the instalments regularly, except once, when, default being made, execution was issued out, and the instalment paid. On her death, execution was taken out against her representatives, who objected that the decree was barred, and that the Kistbandi had no force as against them. This objection was, on appeal to

Digitized by Google

KISTBANDI—*contd.*

the High Court, allowed. *A.* then brought a suit on the Kistbandi:—

Held, that at the time the Kistbandi was entered into, the decree was capable of being executed under the law as it was then administered, and that, therefore, there was a valid consideration for the Kistbandi.

Held also, that, even had there been no valid consideration for the Kistbandi, yet the principle laid down in § 25, Cl. 3, of Act IX. of 1872, and which prevailed before the passing of that Act would have saved the Kistbandi from becoming void for want of consideration. HEERA LALL MOOKHOPADHAYA *v.* DHUNPUT SINGH. *Prinsep* and *Tottenham*, JJ...**I. L. Rep. 4 Cal. 500; 3 Cal. Rep. 554, 1878.**

See **Limitation 42. 43. 44.**

RAGHOJI *v.* ABDUL...**I. L. Rep. 1 Bom. 590.**

KALLY PROSONNO *v.* HEERA LAL. **I. L. Rep. 2 Cal. 468.**

MUNGUL PRASHAD *v.* SHAMA KANT. **I. L. Rep. 4 Cal. 708.**

KNOWLEDGE—Acquiescence— Estoppel.

See **Mortgage. 22.**

MORAN *v.* MITTU BIBI...**I. L. Rep. 2 Cal. 58.**

KOLACHAR.

See **Hindu Law — Inheritance — Primogeniture.**

CHOWDHRY CHINTAMAN SINGH *v.* MUSST. NOWLUKHO KONWARI. **L. Rep. 2 I. A. 263; I. L. Rep. 1 Cal. 153.**

KORLAYA.

See **Land Tenure in Kanara.**

BHASKARAPPA *v.* COLLECTOR OF KANARA...**I. L. Rep. 3 Bom. 452.**

KULKARNI — Adoption by — Government Sanction unnecessary.

See **Hindu Law—Adoption. 14.**

NARHAR *v.* NARRAYAN...**I. L. Rep. 1 Bom. 607.**

KULKARNI WATAN—Right to Share in —Suit for Declaration of.

See **Pensions Act XXIII. of 1871, 5 4.**

BABAJI *v.* RAJARAM.....**I. L. Rep. 1 Bom. 75.**

KUMRI ASSESSMENT AND CULTIVATION.

See **Land Tenure in Kanara.**

BHASKARAPPA *v.* COLLECTOR OF KANARA...**I. L. Rep. 3 Bom. 452.**

KURPHA TENANT—Transfer of Junmai Rights of.

See **Landlord and Tenant. 3.**

BONOMALI *v.* KOYLASH CHUNDER... **I. L. Rep. 4 Cal. 135.**

LACHES.

See **Acquiescence. 1.**

UDA BEGAM *v.* IMAM-UD-DIN...**I. L. Rep. 1 All. 82.**

See **Limitation. 19.**

JUGGERNATH *v.* SYUD SHAH...**L. Rep. 2 I. A. 48.**

LAMBARDAR—Liability of—to Co-Sharers for Profits.

See **Liability of Lambardar to Co-Sharers for Profits.**

MANGAL KHAN *v.* MUMTAZ ALI .. **I. L. Rep. 2 All. 239.**

—— Payment by—of Arrears of Revenue out of Collections in his hands—Suit for Share of Profits—Right to Set-off.

See **Set-off. 1.**

UDAI SINGH *v.* JAGAN NATH...**I. L. Rep. 1 All. 135.**

LANDS ACQUIRED BY MEMBER OF MALABAR TARWAD.

See **Declaratory Decree. 10.**

CHANDU *v.* CHATHU NAMBIAR...**I. L. Rep. 1 Mad. 381.**

LAND ACQUISITION ACT X. OF 1870.

1. —— *Principle on which Compensation is to be given.*] Where Government takes property belonging to private individuals under statutory powers, those persons should obtain such a measure of compensation as is warranted by the current price of similar property in the neighbourhood, without any special reference to the uses to which it may be applied at the time when it is taken by Government, or to the price which its owner may previously have given for it. If it can be satisfactorily shown that the purposes to which the land is applied are as productive as any other to which it is applicable

Digitized by Google

LAND ACQUISITION ACT X. OF 1870 —*contd.*

or that the price given by the owners is its full market value, it would be just to assess the compensation on that basis. In accordance with these principles, the question for inquiry is, what is the market value of the property, not according to its present disposition, but laid out in the most lucrative way in which the owners could dispose of it. PREMCHAND BURRAL *v.* THE COLLECTOR OF CALCUTTA. *Garth*, C.J., and *Macpherson*, J...**I. L. Rep. 2 Cal. 103, 1876.**

2. —— §§ 38, 39, 40, 58—*Compensation, Apportionment of—Right of Suit.*] Act X. of 1870 contains abundant evidence of the intention of the Legislature that all proceedings in regard to land acquisition and compensation should be conducted under the Act, and not otherwise. A decree which apportions compensation made under § 39 of that Act by a Court to which such matter has been referred under § 38 is final, and cannot be questioned otherwise than by the appeal permitted under § 39. *Dwarka Singh* v. *Solano* (22 W. Rep. 38) dissented from. NILMONEE SINGH DEO *v.* RAMBUNDHOO ROY. *Jackson* and *Tottenham*, JJ. **I. L. Rep. 4 Cal. 757; 3 Cal. Rep. 211, 1878.**

LAND BELONGING TO GOVERNMENT—(Bombay Act I. of 1865, § 11.)

See **Bombay Act I. of 1865, § 35.**

COLLECTOR OF THANA *v.* DADABHAI... **I. L. Rep. 1 Bom. 353.**

LAND CHARGED WITH PAYMENT OF AN ALLOWANCE FOR DOWER—Transfer of.

See **Covenant running with the Land. 1.**

ABADI BEGUM *v.* ASA RAM...**I. L. Rep. 2 All. 162.**

LAND HELD FREE OF ASSESSMENT UNDER GRANT FROM GOVERNMENT BESTOWING THE LANDS THEMSELVES.

See **Pensions Act XXIII. of 1871. 3. 5**

RAVJI *v.* DADAJI.....**I. L. Rep. 1 Bom. 523.**

BABAJI *v.* BALLAL.....**Ibid. 75.**

LAND HELD BY JOINT OWNERS—*Abatement of a Nuisance—Criminal Trespass—Mischief—Penal Code, §§ 141, 147, 425—Examination of Witnesses for the Defence—Criminal Procedure Code, Act X. of 1872, §§ 219, 359, 362, 530—Superintendence of High Court—Stat. 24 and 25 Vict., C. 104, § 15.*] A dispute having arisen between *G.* and *S.*, joint owners of certain land, in consequence of the latter having erected a *nawbut-khana* on a portion of the joint land, to which the former objected, the Magistrate, hearing of the dispute, made an order, after holding an inquiry, adjudging exclusive possession of that part of the land on which the *nawbut-khana* stood to *S.* *G.* thereupon instituted a suit to have it declared that he was entitled to joint possession over the whole of the land, and that *S.* was not entitled to erect a *nawbut-khana* thereon, and prayed that the *nawbut-khana* should be broken down, and obtained a decree which was in terms that the plaintiff's suit should be decreed. The *nawbut-khana* not having been removed by *S.*, some servants of *G.* went to the place and pulled it down; for which, on the complaint of *S.*, they were convicted of mischief and fined under § 425 of the Penal Code, by the Magistrate. Subsequently some servants of *G.*, including the petitioners, seeing workmen in the employment of *S.* re-erecting the *nawbut-khana*, not only protested against the erection, but pulled down the bamboos, thrusting aside the servants of *S.*, and throwing to the ground one of them who had climbed up on one of the bamboos and refused to come down.

On a complaint being made to the Magistrate, on the 9th October 1877, the accused were at once summoned; and on their appearing before the Magistrate on the same day, he at first proposed to deal summarily with the case, but afterwards framed a charge under §§ 141 and 147 of the Penal Code, and then and there called on the accused for their defence. Several witnesses were named for the defence, and summonses were issued next morning for their attendance. The witnesses not having been found, the accused, on the 12th, applied to the Magistrate for further time, representing that the time was that of the *Doorga Poojah*; but the Magistrate declined to allow further time, and proceeded to convict all the prisoners of rioting under § 147 of the Penal Code, and sentenced each to three months' rigorous imprisonment:—

Digitized by Google

LAND HELD BY JOINT OWNERS —*contd.*

Held, by *Jackson*, J.—That the Magistrate was in error in making the above order under § 530 of the Criminal Procedure Code, adjudging exclusive possession to *S*. The subject-matter was one to which that sanction could have no application. There was really no question of possession. The land was in the joint possession of *G*. and *S*, and the only question was, whether one of them being a joint owner was at liberty to make use of the land in such a manner as to cause what the other joint owner chose to consider an annoyance, and against the will of that joint owner. The order, therefore, under § 530 was beyond the power of the Magistrate. *Held* also, that an order under § 530 is only valid until the person to whom possession is given is ousted by due course of law, and that the effect of the judgment obtained by *G*. was to oust *S*., and to prevent *S*. from being legally entitled, at the time when the bamboos were pulled down, as stated above, to have those bamboos put together in that place in the form of a *nawbut-khana*, and therefore that the acts of the accused in removing and pulling down the bamboos did not amount to mischief within the meaning of § 425 of the Penal Code, as there was no causing of wrongful loss in the act done by the accused.

Held also, that the case being warrant case, it was the duty of the Magistrate to have summoned and examined the witnesses offered on behalf of the accused, and that under the circumstances of the case it would have been reasonable to have allowed further time to procure the attendance of those witnesses.

Section 539 of the Criminal Procedure Code means that if among the persons named by the accused as witnesses for the defence, the Magistrate considers that any particular witness is included for the purpose of vexation and delay, he is to exercise his judgment and inquire whether such witness is material; but that section does not enable a Magistrate to inquire generally into what the defence of the accused person is to be, and to consider whether, on learning the nature of that defence, he is absolutely to abstain from summoning the whole of the witnesses cited by the accused.

Held, also, that as the accused were not on the land in question as members of an unlawful assembly, nor for any unlawful purpose, the conviction, as well as the procedure under which the conviction was had, was illegal.

LAND HELD BY JOINT OWNERS —*contd.*

Held by *Cunningham*, J., that the accused were merely exercising the remedy of abating a private nuisance, and there having been practically no violence, and no real danger of any breach of the peace, the police standing by and looking on all the time, the act of abatement was legal.

Held, also, that the act of the complainant in erecting the *nawbut-khana* was mischief within the meaning of § 425 of the Penal Code.

Held also, that the accused were exercising a legal right of self-defence of property against such mischief, and therefore that the conviction must be quashed.

Held further, per *Ainslie* and *McDonnell*, JJ., that the High Court cannot interfere, in the exercise of its powers of extraordinary jurisdiction, unless all other remedies provided by law have been exhausted. The petitioners in this case having the remedy of appeal, until that remedy had been resorted to, the High Court, upon the proper application of Stat. 24 and 25 Vict., C. 104, § 15, could not interfere. EMPRESS *v.* RAJCOOMAR SINGH.....**I. L. Rep. 3 Cal. 573; 2 Cal. Rep. 62, 1878.**

LAND LET FOR CULTIVATION—Acquisition of Occupancy Rights in—by Ryot, does not alter Terms of Tenancy except Conditions fixing a term therefor.

See **Bengal Act VIII. of 1869. 1.**

LALL SAHAO *v.* DEV NARRAIN SINGH.....**I. L. Rep. 3 Cal. 781.**

LAND IN A MAHAL HELD BY THE LAMBARDAR KHUD-KASHT AT A NOMINAL RENTAL.

See **Liability of Lambardar to Co-Sharers for Profits.**

MANGAL KHAN *v.* MUMTAZ ALI. **I. L. Rep. 2 All. 239.**

LAND PAYING REVENUE — Khalisa Mahals—Remission of Revenue for a Term of Years.

See **Sale in Execution of Decree. 8.**

SHOWERS *v.* SETH GOBIND DASS. **I. L. Rep. 1 All. 400.**

Digitized by Google

LAND PURCHASED FROM A HINDU DEVISEE—Liability of — for Debts of his Testator.

See **Limitation. 38a.**

GREENDER CHUNDER *v.* MACKINTOSH.....**I. L. Rep. 4 Cal. 897.**

LAND RECLAIMED FROM THE SEA.] The plaintiff demised to the defendants for a term of 999 years certain land, for a portion of which, *A.*, the defendant, was liable to pay an annual rent of Rs. 500 per acre. For the other portion, *B.*, described as being "at times covered by the sea," the defendant was liable to pay an annual rent of Re. 1 per acre, "until some portion thereof should have been reclaimed from the sea," "and from and after any portion should have been reclaimed from the sea, until the whole should have been so reclaimed, a yearly rent, calculated at the rate of Rs. 500 per acre, for so much of the said ground *A.* as should for the time being be reclaimed from the sea, and after the whole should have been reclaimed, the yearly rent of Rs. 500 per acre for the whole." At the time of the execution of the lease it was not in the contemplation of the parties that a dock should be constructed on the premises demised.

The lessees had power to dig or excavate any portion of the demised premises, and to remove the soil therefrom.

The lessees afterwards excavated a portion of *B.* and converted it into a dock, at the entrance of which they constructed gates, by means of which they could in a measure, but not entirely, control the flow of the sea into the dock. The defendants charged nothing for the use of the dock, but for the use of the wharves round it they charged a fee.

Held, that though it was not improbable that had it been contemplated at the time of the preparation of the lease that the land *B.* might be dealt with as had actually taken place, that event would have been provided for, yet the Court could only seek to discover the intention of the parties from all parts of the deed; and that the expression "to reclaim from the sea" signifying in its primary and ordinary sense the conversion of the reclaimed land into dry land, by rendering it secure from the ingress of the sea, with the view of its being used as such, there was no reason for giving those words an extended or liberal interpretation, and that the

LAND RECLAIMED FROM THE SEA —*contd.*

construction of the dock was not such a reclamation as was contemplated in the lease, and therefore the enhanced rent of Rs. 500 per acre could not be charged for the water area of the dock. THE SECRETARY OF STATE FOR INDIA *v.* SIR A. SASSOON *Sargent* and *Green*, JJ...**I. L. Rep. I. Bom. 513, 1876.**

LAND IN SALSETTE.

See **Bombay Act I. of 1865, § 35.**

COLLECTOR OF THANA *v.* DADABHAI.....**I. L. Rep. 1 Bom. 352.**

LAND SUBMERGED—Re-formation of.

See **Re-formation of Submerged Land.**

HURSUHAI SINGH *v.* SYUD LOOTF ALI KHAN...**L Rep. 2 I. A. 28.**

—— Right of Occupancy in—Extinguishment of—by Non-Payment of Rent during Submergence.

See **Extinguishment of Right of Occupancy.**

HEMNATH DUTT *v.* ASHGUR SINDAR.....**I. L. Rep. 4 Cal. 894.**

LAND TENURE IN KANARA —*Land Revenue*—Kumri *Cultivation*—Kumri *Assessment*—*Rights of* Vargdars—Kumri.] The plaintiff sued to recover possession of four specified tracts of forest land situated in the district of North Kanara, from which he alleged he had been wrongfully ejected under an order made by the Collector in 1861, and to recover certain sums of money exacted from him between 1849 and 1861 by the revenue authorities, as a tax or rent for the exercise by him of his proprietary rights by way of *kumri* cultivation.

As to three of the tracts of the land in question the plaintiff based his claim on certain sanads alleged to have been granted by the officers of Tippoo Sultan to his ancestors, and as to the fourth he claimed a title by prescription, alleging that the land had been in the possession of his family for 40 years prior to 1870, the date of the institution of the suit. The plaint contained no indication of a claim which was put forward during the argument of the appeal, that the payment to the Government of assessment in respect of *kumri*,

Digitized by Google

LAND TENURE IN KANARA—*contd.*

pepper, and *farmaish*, or in particular of *kumri* assessment, and the entry of such charge in the *chitta* of a *vargdar*, *muli* or *geni*, gives to such *vargdar*, or at least is a recognition by Government that such *vargdar* has a right of ownership in the forests in respect of which it was contended such assessment was imposed. The plaintiff admitted a right on the part of Government to take certain kinds of timber from the forests, but subject to this he contended that the timber, as the soil and produce of the forests generally, belonged to him, subject also to the right of Government to levy an increased assessment thereon. Subject to these rights on the part of Government, the plaintiff claimed an absolute right to have *kumri* cultivation carried on within the limits specified ; that he and no other had a right to cultivate and give in cultivation as rice land jungle land within those limits ; and an exclusive right to cut down and dispose of timber within those limits :—

Held by *Green*, J., on the evidence, that the sanads put forward were not proved to have been in fact executed by any person having authority to execute such documents ; and that even if genuine they had never been recognized by the British Government as valid and binding, or been made the foundation of the revenue relations between the British Government and the plaintiff's family or those under whom they claimed.

The fact, however, that the plaintiff put forward those sanads as the root of his title,—so far at least as concerned the greater portion of the property claimed,—was an admission that at the date of those sanads the then Government had the *power* to make the grants they purported to evidence ; and, the sanads being out of the way, the plaintiff had to establish that he had, at the institution of the suit, succeeded to rights of property which by his own case at the dates respectively of the sanads belonged to the then Government, and would, in the absence of any private right shown then to exist therein, have vested in the East India Company after the taking of Seringapatam in May 1799, and the subjugation of the country under the rule of Tippoo Sultan.

The primary meaning of the word *varg* was 'account,' and it was only an extension of the original meaning that it came to be used as indicating the property to the assessment on which such account relates.

LAND TENURE IN KANARA—*contd.*

Kumri assessment was in its origin an assessment upon, or having reference to, the actual number of labourers employed cutting down forest, and not with reference to any particular portion or quantity of land or its produce. Originally *kumri* assessment was inserted in *vargs* only as incidental to rice or garden cultivation, and the entry of such assessment in the plaintiff's *vargs*, and its payment for a long series of years, did not show or manifest any estate or permanent right at all in the forests as such, as being vested in the plaintiff, even as to such ground as he might have been able to show had been at former times *kumried* by his labourers ; and whether or not the Government may have had, or having had may have ceased to have, any right to collect *korlaya* (tax on bill-hooks) direct from the cutters so long as *kumri* cultivation at all is or was carried on, yet they have a right to stop the cultivation altogether (remitting the *kumri* assessment entered in the *vargs*) in all the forests of North Kanara, including those in question in the present case, not shown to be private property, on some other ground than the mere entry of *kumri* assessment in a particular *varg* or number of *vargs*.

The plaintiff's suit, therefore, which was to recover possession of particular tracts of forests on the ground of ownership shown or evidenced only (apart from the question of the sanads) by such entry in his *vargs* of *kumri* assessment, was rightly dismissed. But even assuming that the plaintiff had established a right exclusive of others, and permanent as against the Government, to have *kumri* cultivation carried on in such places as he could show had theretofore been *kumried* by him or by his permission, or even throughout the limits claimed in the plaint, such a right, having regard to the incidents of the cultivation itself, did not necessarily involve general ownership of the soil. Such general ownership, not being in the plaintiff, was with the Government ; and the plaintiff, if his right, supposing he had any, were disturbed, either by a stranger or by the Government, ought to have asserted it by a suit for damages for the disturbance of a right *in alieno solo*, and not by a suit to recover possession.

Even had the plaintiff, therefore, established a permanent and exclusive right to carry on *kumri* cultivation within the limits specified in his plaint, yet his suit, which was directed to recover possession on the ground of general

Digitized by Google

LAND TENURE IN KANARA—*contd.*

ownership, should have been dismissed. That was the case he put forward to the last, and to which his evidence was directed, and it would be quite inadmissible for him to fall back on another case, which, if established, would have, as its result, a relief wholly different to that which, and which alone, he had all along asked for.

Held also, that the plaintiff's claim was barred by limitation.

Per West, J.—Though the introduction of the British rule did not extinguish private rights already fully acquired, the principle to start from is that waste lands belong to the State. The mere fact that a *vargdar* is charged in the village accounts with an assessment for *kumri*, cannot of itself make him the owner of all the forests within its boundaries. He could not become the owner, in fact, without the active or passive assent of the Government passing its proprietary right to him. Such assent is not to be inferred as to an extensive tract of forest from the payment and receipt of some insignificant sum, *e.g.*, a moiety of the rent realized on a small number of acres which may most naturally be referred to rateability, or the mere participation by the State, according to an immemorial rule, in all profits arising from the lands. As there must be certainty in a grant as to the area conferred, so there must be certainty as to the area, or at least as to the identity, of the object occupied, if the occupation is to raise the presumption of a grant, or of acquiescence in a definite occupation. It is not inconsistent with this principle, but rather as complementary to it, that the further rule is accepted, that the possession, and the ownership springing from possession, of a farm or *varg* as a whole, and within the limits as to which certainty is attainable, are not prevented or destroyed by an undoubted encroachment, or by a want of certainty as to some particular plot of ground, or as to the precise delimitation here or there of its proper boundary line. A suit to ascertain boundaries does not imply that either of the owners of contiguous estates has no property at all; and as there may be an effective grant of lands in possession though occupied of wrong, so may distinct acquiescence give a like right in the like case; but there can be no grant, no acquiescence in a possession, unless the essential elements of possession—a fixed, a definable, and an exclusive possession—

LAND TENURE IN KANARA—*contd.*

exist, and are present to the perception of the parties.

In the case of a private owner even, the allowance of acts which do not necessarily involve any denial of his ownership, or a grant from him, does not suffice to create an ownership against him, and the mere non-interference of the State, to which neglect is not to be imputed, is not to be accounted for, if it can otherwise be accounted for, on a presumption of a surrender of its ownership. Such a transaction must be evidenced by an undisguised and effective appropriation assented to or submitted to by some one having due authority; or else fortified by an equivalent law of prescription. Under these conditions a true ownership even of the forests might arise, but the mere payment of the *kumri* assessment would not create it in the case of a *vargdar*.

Upon the evidence, *Held*, that the sanads were not proved, nor had the plaintiff established any exclusive possession of, or proprietary right in, any part of the forest claimed, while the evidence showed a continued and consistent exercise on behalf of the Government of its proprietary right over the timber, and even the firewood, in the forests in dispute, from the time that the assertion of the right became a matter of appreciable consequence; and that the plaintiff's family knew this, and submitted to it, and themselves applied repeatedly for timber to the revenue officers. From the year 1842 downwards there was no instance which effectively disproved the acquiescence of the plaintiff's family in the ownership of Government. That ownership had not been parted with at all in the opinion of the parties most interested. If it had been parted with, and become vested in the plaintiff's ancestors as an integral portion of the estate in the land which the plaintiff claimed was theirs, then the assumption and the exercise of ownership by the Government over the trees from 1841 down to the filing of the suit, was itself a perpetual ouster of the family from a portion of their estate, and would constitute a complete eviction of the owners as such. If there was such an ouster proved as to the whole by a multiplicity of acts bearing on the several parts of the estate, but all referable to the same principle or purpose, then the plaintiff had a cause of action in the nature of ejectment so soon as he was disturbed in his possession by any of these acts, in their legal nature such as

Digitized by Google

LAND TENURE IN KANARA—*contd.*

to contradict and annihilate his right throughout the estate, even though their immediate physical incidence was on but particular parts of it,—a cause of action extending as to its physical object to the whole property, because his power over the whole was invaded and overthrown. Regarding the plaintiff's right therefore to land, to timber, to *kumri* cultivation, and to reclamation and disposal at his own mere will, as parts, so far as the right was concerned, of a single legal unit, the cause of action had arisen more than twelve years before the institution of the suit. The plaintiff's right so far as it rested on the sanads was not supported, but contradicted by the active enjoyment assumed on behalf of the Government thirty years almost before the institution of the suit, of an important part of the advantages conferred by the grants, and on an assertion of rights, which if the grants were to be construed as the plaintiff desired, called for immediate action in the Court on his part. The claim was also contradicted by a series of transactions in which the Government officers disposed, from time to time, of portions of land included within the confines of the estate which the plaintiff claimed. His claim, therefore, on the sanads was untenable.

Setting aside the sanads then, the mere payment of *kumri* tax, however it may have indicated that some land was beneficially occupied by the *vargdar*, afforded by itself no certain evidence either of the place of that occupation, or of its nature as temporary or permanent, as held on proprietary right, or as merely casual and precarious. It is the possibility of referring the exaction levied to some particular area, shown to have been actually and exclusively held by the tax-payer, either by extrinsic evidence, or by that of the Government-accounts themselves, that makes the payment and receipt of a tax a practical assertion, and admission of private ownership of the space thus rendered distinguishable.

But private ownership being established, it still remains true that a property in the soil must not be understood to convey the same rights in India as in England. It may be subject to restrictions and qualifications, varying according to the peculiar laws of each country; and those acts which under one system would be necessarily regarded as contradictions of any ownership over the object on which they were exercised

LAND TENURE IN KANARA—*contd.*

except that from which they spring, may, under another system, be quite compatible with an ownership subsisting unimpaired side by side with the limited right to which they would be attributed. The reserve of timber generally, as of particular kinds of timber, may be referred to as an instance of this divided dominion. What the Government intended, and practically intimated through its officers, constituted the bounds which it set to the plaintiff's acquisition through its acquiescence both as to the extent of the rights to be exercised, and the local limits within which they were to be exercised. As to the former point, whether the plaintiff's predecessors gained a general ownership of the soil or not, they either did not gain an ownership of the timber, or were wholly ousted from the exercise of that ownership from 1842 downwards.

As to the latter point, the evidence showed that the plaintiff's family, as *vargdars*, exercised rights over forest tracts in all the estates to which the present claim extended, though as to some of those tracts these rights could not be referred to any particular space. But even though there had been no interference on the part of the revenue officers with the plaintiff's free use of the forest, that free use without an exclusive appropriation would not in itself constitute an exclusive right against the State. The right arising from the State's eminent domain is not extinguished by its mere non-exercise; and its exercise was not called for until some public injury or inconvenience arose.

The exercise of the plaintiff's dominion had been prevented, except within such limits as the executive officers prescribed, at any rate from 1842, while the ownership of the Government over the forest trees, and its proprietary right in the soil had been, during the same time at least, uniformly asserted, and the plaintiff's suit was therefore barred by limitation. BHASKARAPPA *v.* COLLECTOR OF KANARA...**I. L. Rep. 3 Bom. 452.**

LANDHOLDER.

See **Madras Act VIII. of 1865, § 1. 1.**

ZINULABDIN *v.* VIJIEN...**I. L. Rep. 1 Mad. 49.**

LANDLORD AND TENANT.

See **Rights of Mirasdars. 1.**

FAKIR MUHAMMAD *v.* TIRUMALA. **I. L. Rep. 1 Mad. 205.**

Digitized by Google

LANDLORD AND TENANT—*contd.*

—— Acquisition of Occupancy Rights by Ryot in Lands let for Cultivation does not alter Terms of Tenancy, except Conditions fixing a Term therefor.

See **Beng. Act VIII. of 1869. 1.**

LAL SAHOO *v.* DEV NARAIN SINGH...**I. L. Rep. 3 Cal. 781.**

—— Adverse Possession.

See **Landlord and Tenant. 9.**

—— English Law of—Application of, to India.

See **Landlord and Tenant. 7.**

—— Enhancement of Rent.

See the Index heading **Enhancement of Rent.**

—— Enhancement of Rent—Arrears—Interest.

See **Interest. 8.**

KHAJAH ASHANOOLLAH *v.* KAJEE AFTABOODEEN...**I. L. Rep. 4 Cal. 594.**

—— Enhancement of Rent—Auction Purchaser—Right of.

See **Beng. Reg. XLIV. of 1793, § 5.**

MOHINY MOHUN ROY *v.* ICHAMOYEE DASSEEA...**I. L. Rep. 4 Cal. 612.**

See **Enhancement of Rent. 1.**

PURMANUND ASRUM *v.* ROOKINEE GOOPTEE.....**Ibid. 793.**

—— Enhancement of Rent—*Bhaoli* Rent.

See **Enhancement of Rent. 4.**

HANUMAN PARSHAD *v.* KAULESSAR PANDAY...**I. L. Rep. 1 All. 301.**

—— Enhancement of Rent—Of Dependent Talook created before Decennial Settlement, and held at Fixed Rent.

See **Enhancement of Rent. 2.**

HURRONATH ROY *v.* GOBIND C. DUTT...**L. Rep. 2 I.A. 193.**

—— Enhancement of Rent of Ghatwals.

See **Ghatwali Tenure.**

LEELANUND SINGH BAHADOOR *v.* THAKOOR MANRUNJUN SINGH. **I. L. Rep. 3 Cal. 251.**

LANDLORD AND TENANT—*contd.*

—— Enhancement of Rent by Ijardar.

See **Enhancement of Rent. 7.**

DOORGA P. MYTEE *v.* JOYNARAIN HAZRAH...**I. L. Rep. 2 Cal. 474.**

—— Enhancement of Rent by Inamdar.

See **Enhancement of Rent. 5.**

PARSHOTAM *v.* KALYAN...**I. L. Rep. 3 Bom. 348.**

See **Miras. 2.**

BABAJI *v.* NARAYAN...**I. L. Rep. 3 Bom. 340.**

VISHNUBHAT *v.* BABAJI .....**Ibid. 345, n.**

See **Inamdar.**

PRATAPRAV *v.* BAYAJI...**I. L. Rep. 3 Bom. 141.**

—— Enhancement of Rent—Notice of, unnecessary where Stipulation in Pottah for Increase of Rental as Lands brought under Cultivation.

See **Bengal Act VIII. of 1869, § 14. 2.**

NISTARNI DASI *v.* BONOMALI CHATTERJI...**I. L. Rep. 4 Cal. 941.**

—— Enhancement of Rent by One Co-Sharer of Land.

See **Co-Sharers of Land. 1.**

DOORGA PRASHAD *v.* JOYNARAIN... **I. L. Rep. 4 Cal. 96.**

See **Enhancement of Rent. 7. 9.**

DOORGA P. MYTEE *v.* JOYNARAIN HAZRAH...**I. L. Rep. 2 Cal. 474.**

BALAJI *v.* GOPAL...**I. L. Rep. 3 Bom. 23.**

—— Enhancement of Rent Reserved by Sanad in A. D. 1775—Conversion of Coinage.

See **Enhancement of Rent. 3.**

MEER MAHOMED HOSSEIN *v.* FORBES...**L. Rep. 2 I. A. 1.**

—— Enhancement of Rent—Right of Mulgar on—to recover from his Mulgeni Tenants.

See **Mistake.**

BABSHETTI *v.* VENKATARAMANU... **I. L. Rep. 3 Bom. 154.**

Digitized by Google

LANDLORD AND TENANT—*contd.*

—— Enhancement of Rent of *Tullubi Bromuttur* Tenure—Notice.

See **Enhancement of Rent. 6.**

NIL MONEY *v.* CHUNDERKANT...**I. L. Rep. 2 Cal. 125.**

—— Enhancement of Rent — Tenure held by Joint Hindu Family—Service of Notice on one Co-Sharer enough.

See **Bengal Act VIII. of 1869, § 14. 1.**

NOBODEEP *v.* SONARAM DASS...**I. L. Rep. 4 Cal. 592.**

—— Ejectment from *Chakeran* Lands.

See **Chakeran Lands.**

HURROGOBIND *v.* RAMRUTNO.....**I. L. Rep. 4 Cal. 67.**

—— Ejectment by Co-Inamdar.

See **Co-Inamdars.**

KRISHNARAV *v.* GOVIND.....**I. L. Rep. 3 Bom. 25, n.**

—— Ejectment of Cultivating Ryot.

See **Partition Suit.**

SAMINDA PILLAI *v.* SUBHA REDDIAR.....**I. L. Rep. 1 Mad. 333.**

—— Ejectment of Ex-Proprietary Tenant — Ousting Tenant admitted by Purchaser of Proprietary Rights in a Mahal.

See **Act XVIII. of 1873, § 7. 1.**

BAKHAT RAM *v.* WAZIR ALI.. **I. L. Rep. 1 All. 448.**

—— Ejectment—Illegal Ejectment—Limitation to Suit by Occupancy Ryot for Possession.

See **Bengal Act VIII. of 1869, § 27. 1.**

GOLABOLEE *v.* KOOTOSBOLLAH SIRCAR...**I. L. Rep. 4 Cal. 527.**

—— Ejectment—Notice to Quit running for 15 Days only not sufficient to maintain Suit to eject Tenant from Year to Year.

See **Ejectment. 1.**

RAM RUTTON *v.* NETRO KALLY...**I. L. Rep. 4 Cal. 339.**

—— Ejectment — Notice to Quit — Suit for Ejectment is not.

See **Ejectment 1,** *ubi supra.*

See **Landlord and Tenant. 1.**

LANDLORD AND TENANT—*contd.*

—— Ejectment, Suit for—on Non-Payment of Arrears of *Bhaoli* Rent.

See **Bengal Act VIII. of 1869, §§ 21 and 52.**

KISHEN GOPAL MAWAR *v.* BARNES. **I. L. Rep. 2 Cal. 374.**

—— Erection of Buildings by Occupancy Ryot.

See **Beng. Act VIII. of 1869.**

LAL SAHOO *v.* DEO NARAIN SINGH. **I. L. Rep. 3 Cal. 781.**

—— Erection of Buildings by Tenant at Will or from Year to Year on Lands demised.

See **Landlord and Tenant. 2.**

—— Exchange of Pattas and Muchalkas necessary as soon as possible after Creation and during Continuance of Tenancy.

See **Madras Act VIII. of 1865, § 4. 1.**

SESHADRI AYANGAR *v.* SANDANAM...**I. L. Rep. 1 Mad. 146.**

—— Ex-Proprietary Tenant—Right of, in *Sir* Land.

See **Act XVIII. of 1873, § 7. 1. 2.**

BAKHAT RAM *v.* WAZIR ALI.. **I. L. Rep. 1 All. 448.**

BHAGWAN SINGH *v.* MURLI SINGH. **Ibid. 459.**

See **Act XVIII. of 1873, § 9. 2.**

BHAGWANTI *v.* RUDR MAN TIWARI. **I. L. Rep. 2 Cal. 145.**

—— Ijara—Right of Renewal Lease.

See **Right of Occupancy. 3.**

JARDINE, SKINNER & Co. *v.* RANI SOORAT SOONDARI DEBI ..**L. Rep. 5 I. A. 164.**

—— *Ijmaili* Property — Suit for Rent — Co-Sharers.

See **Landlord and Tenant. 4.**

—— Implied Covenant for Quiet Enjoyment.

See **Landlord and Tenant. 7.**

—— Increase of Rental—Stipulation in Pottah for—Notice of Enhancement.

See **Bengal Act VIII. of 1869, § 14. 2.**

NISTARNI DASI *v.* BONOMALI CHATTERJI.....**I. L. Rep. 4 Cal. 941.**

Digitized by Google

LANDLORD AND TENANT—*contd.*

See **Enhancement of Rent. 8.**

EKRAM MUNDUL *v.* HOLODHUR PAL...**I. L. Rep. 3 Cal. 271.**

—— Khot's Tenants entered as Occupants in Survey Registers.

See **Entry of Names of Khot's Tenants in Revenue Survey Register as Occupants.**

D. R. BAM *v.* THE SURVEY COMMISSIONER OF RATNAGIRI...**I. L. Rep. 3 Bom. 134.**

—— *Kurpha* Tenant—Transfer of Right of.

See **Landlord and Tenant. 3.**

—— Lease by Lessor out of Possession—Lessee's Right of Entry.

See **Ejectment. 2.**

TIERY *v.* KRISTODHAN BOSE.....**L. Rep. 1 I. A. 76.**

See **Landlord and Tenant. 18.**

LOKENATH GHOSE *v.* JUGOBUNDHOO ROY...**I. L. Rep. 1 Cal. 297.**

—— Lease for a Year certain with Agreement to cultivate for another Year if Landlord desire it—Registration.

See **Lease. 1.**

APA *v.* NARHARI.....**I. L. Rep. 3 Bom. 21.**

—— Lease, Registration of—Madras Act VIII. of 1865, § 3—Puttah.

See **Registration. 11.**

RAMASWAMI *v.* COLLECTOR OF MADURA...**L. Rep. 6 I. A. 170.**

—— Lease of Zemindary Rights.

See **Act XVIII. of 1873, § 95, Cl. m. 1.**

ABDUL AZIZ *v.* WALI KHAN.. **I. L. Rep. 1 All. 338.**

—— Limitation—Admission by Tenant of Liability to pay Rent—Non-Payment of Rent for 12 Years by Occupancy Ryot gives him no Title to the Land.

See **Landlord and Tenant. 9.**

See **Limitation. 21.**

PORESH NARAIN *v.* KASSI CHUNDER.....**I. L. Rep. 4 Cal. 661.**

LANDLORD AND TENANT—*contd.*

—— Notice to Quit running for Ten Days only not sufficient to maintain Ejectment against Tenant from Year to Year.

See **Ejectment. 1.**

RAM RUTTON *v.* NETRO KALLY...**I. L. Rep. 4 Cal. 339.**

—— Notice to Quit—Suit for Ejectment not equivalent to.

See **Ejectment. 1,** *ubi supra* ; and *see* **Landlord and Tenant. 1.**

—— Rent due by Former Tenant—Liability of Tenure.

See **Landlord and Tenant. 6.**

—— Right of Occupancy—Acquisition of—by Firm of Capitalists.

See **Right of Occupancy. 5.**

RAI KOMUL DOSSEE *v.* LAIDLEY .. **I. L. Rep. 4 Cal. 957.**

—— Right of Occupancy — Acquisition of — in *Jalkar.*

See **Jalkar. 1.**

JUGGOBUNDHOO *v.* PROMONATH... **I. L. Rep. 4 Cal. 767.**

See **Right of Occupancy. 6.**

BOLLYE SATEE *v.* AKRAM ALLY... **Ibid. 961.**

—— Right of Occupancy--Acquisition of—in Lands let for Cultivation does not alter Terms of Tenancy except Conditions fixing a Term thereto.

See **Beng. Act VIII. of 1869. 1.**

LAL SAHOO *v.* DEV NARAIN SINGH. **I. L. Rep. 3 Cal. 781.**

—— Right of Occupancy—Acquisition of, by Ryot occupying and cultivating for more than Twelve Years under one not Rightful Landlord.

See **Right of Occupancy. 1.**

TOOLFUN BIBEE *v.* RADHIKA P. CHUNDER.....**I. L. Rep. 3 Cal. 560.**

—— Right of Occupancy—Inheritance to.

See **Act XVIII. of 1873, § 9. 2.**

BHAGWANTI *v.* RUDR MAN TIWARI. **I. L. Rep. 2 All. 145.**

See **Right of Occupancy. 2.**

ABLAKH RAI *v.* UDIT N. RAI...**I. L. Rep. 1 All. 353.**

Digitized by Google

LANDLORD AND TENANT—*contd.*

—— Right of Occupancy in Submerged Land—Extinguishment of, by Non-Payment of Rent during Submergence.

See **Extinguishment of Right of Occupancy.**

HEMNATH DUTT *v.* ASHGUR SINDOR...**I. L. Rep. 4 Cal. 894.**

—— Right of Occupancy Not Transferable in Absence of Custom.

See **Right of Occupancy. 2. 4.**

ABLAKH RAI *v.* UDIT NARAIN RAI. **I. L. Rep. 1 All. 353.**

DWARKA NATH *v.* HURRISH CHUNDER...**I. L. Rep. 4 Cal. 925.**

See **Act XVIII. of 1873, § 9. 1.**

UMRAO BEGUM *v.* LAND MORTGAGE BANK.....**I. L. Rep. 1 All. 547.**

—— Right of Occupancy Tenant—Sale of—in Execution of Decree or otherwise.

See **Act XVIII. of 1873, § 9. 1.**

UMRAO BEGUM *v.* LAND MORTGAGE BANK...**I. L. Rep. 1 All. 547.**

See **Right of Occupancy. 2. 4.**

ABLAKH RAI *v.* UDIT N. RAI...**I. L. Rep. 1 All. 353.**

DWARKA NATH *v.* HURRISH CHUNDER...**I. L. Rep. 4 Cal. 925.**

—— *Sir* Lands—Mortgage of Proprietary Rights in a Mahal followed by Sale—Purchase of Mortgagor's Interest by Mortgagee—Lease by Mortgagee of *Sir* Lands—Ouster of Tenant by Mortgagor—Mortgagee's Remedy.

See **Act XVIII. of 1873, § 7. 1.**

BAKHAT RAM *v.* WAZIR ALI...**I. L. Rep. 1 All. 448.**

—— Suit to Enforce Acceptance of Pottah—Jurisdiction.

See **Madras Act VIII. of 1869, § 9. 2.**

ZAMINDAR OF DEVARACOTE *v.* VEMURI VENKAYYA.....**I. L. Rep. 1 Mad. 389.**

LANDLORD AND TENANT—*contd.*

—— Suit to Enforce Acceptance of Pottah—Mortgage and Lease to Mortgagee by Zemindar — Transfer by Mortgagee's Heirs—Suit against Transferee.

See **Madras Act VIII. of 1865, § 1. 1.**

ZINULABDIN *v.* VIJIEN ..**I. L. Rep. 1 Mad. 49.**

—— Suit to Enforce Acceptance of Pottah—Tender of Pottah.

See **Madras Act VIII of 1865, § 9. 1.**

SAYUD CHANDA *v.* LAKSHMANA... **I. L. Rep. 1 Mad. 45.**

See **Suit for Kabulayat. 1.**

GOGON MANJI *v.* KISHIWARY DEBY. **I. L. Rep. 3 Cal. 498.**

—— Suit for Kabulayat by one of several Co-Sharers.

See **Co-Sharers of Land. 1.**

GUNNI MAHOMED *v.* MORAN ...**I. L. Rep. 4 Cal. 96.**

—— Suit for Kabulayat at Enhanced Rent—False Defence—Over-Estimate of Rent by Plaintiff.

See **Suit for Kabulayat. 2.**

BROJO KISHORE SINGH *v.* BHARRUT SINGH...**I. L. Rep. 4 Cal. 963.**

—— Suit for Kabulayat at Enhanced Rate—Tender of Pottah.

See **Suit for Kabulayat. 1.**

GOGON MANJI *v.* KASHIWARY DEBY.....**I. L. Rep. 3 Cal. 498.**

—— Wrongful Dispossession of Lessee by Lessor—Jurisdiction of Civil and Revenue Courts.

See **Act XVIII. of 1873, § 95, Cl. m. 1.**

ABDUL AZIZ *v.* WALI KHAN.....**I. L. Rep. 1 All. 338.**

—— Wrongful Distraint—Cause of Action.

See **Madras Act VIII of 1865, § 49. 1.**

SRINIVASA *v.* EMPERUMANAR ..**I. L. Rep. 2 Mad. 42.**

Digitized by Google

LANDLORD AND TENANT—*contd.*

—— Wrongful Distraint by Third Person—Landlord's Right to sue to set aside.

See **Right to Sue. 9.**

HORRO NARRAIN *v.* SHOODHA KRISHTO BERAH...**I. L. Rep. 4 Cal. 890.**

1. —— *Notice to Quit—Ejectment.*] A ryot whose tenancy can only be determined by a reasonable notice to quit, expiring at the end of the year, can claim to have a suit for ejectment brought against him by his landlord dismissed on the ground that he has had no notice. RAJENDRONATH MOOKHOPADHYA *v.* BASSIDER RUHMAN KHONDKHAR...**I. L. Rep. 2 Cal. 146, 1876, F. B**

See **Ejectment. 1.**

RAM ROTTON MUNDUL *v.* NETRO KALLY DASSEE...**I. L. Rep. 4 Cal. 339.**

2. —— *Erection of Buildings by Tenant at Will or from Year to Year—Right of Landlord to determine Tenancy—Compensation — Act X. of* 1859, § 6.] There is no law in India which converts a holding at will, or from year to year, or for a term of years, into a permanent tenure, merely because the tenant, without any arrangement with his landlord, builds a dwelling-house on the lands demised.

The terms of a holding, as between landlord and tenant, must always be matter of contract expressed or implied. If they enter into an express agreement of tenancy, either written or verbal, such agreement generally defines the terms of the holding. If, on the other hand, the tenant is let into possession without any express agreement, and pays rent, he becomes a tenant at will, or from year to year: or, in other words, holds by the landlord's permission upon what may be the usual terms of such by the general law or local custom; and in such a case he is a liable to be ejected by a reasonable notice to quit. Local customs may engraft special terms and incidents on the contract of tenancy; but the existence of the custom in such cases must be a matter of proof, and a Judge cannot act on such customs until their existence is duly established.

Where, therefore, the plaintiff, after due notice to quit, sought to eject the defendants from certain lands, of which it appeared that the defendants and their ancestors had been in possession for fifty or sixty years, and which had been used as a homestead, consisting of a house and fruit trees; but there was no evidence as to the origin of the tenancy, nor (except as to the amount of rent) as to the terms of it; nor did it appear who built the house or planted the fruit trees:—*Held*, that the defendants were tenants from year to year, and liable to be ejected by a proper notice to quit. *Advito Churn Dey* v. *Peter Dass* (13 Beng. L. Rep. 417; S. C. 17 W. Rep. 383) followed. PROSUNNO COOMAREE DEBEA *v.* SHEIK RUTTON BEPARY. *Garth*, C. J., and *Birch*, J .....**I. L. Rep. 3 Cal. 696; 1 Cal. Rep. 577, 1878.**

LANDLORD AND TENANT—*contd.*

3. —— Kurpha *Tenant—Right to transfer —Execution.*] The *jummai* rights of a *kurpha** tenant is not transferable without the consent of the ryot landlord. BONOMALI BAZADUR *v.* KOYLASH CHUNDER MOJOOMDHAR. *Garth*, C. J., and *Jackson*, J...**I. L. Rep. 4 Cal. 135 1878.**

4. —— *Suit for rent of* Ijmaili *Property—Co-Sharers—Form of Suit—Parties.*] If *ijmaili* property is let to a tenant at one entire rent, the rent is due in its entirety to all the co-sharers, and all are bound to sue for it; no co-sharer can sue to recover the amount of his share separately, whether the other co-sharers are made parties to the suit or not. But if the land demised ceases to be *ijmaili*, and different portions of it become the property of different owners, any one of the owners may sue for so much of the rent as he considers himself entitled to, making the other owners parties to the suit.

Where co-sharers of *ijmaili* land let to a tenant at an entire rent brought a suit against their tenant to recover their proportionate shares of the rent, and made the other co-sharers defendants, avowedly for the purpose of obtaining an adjudication of their title as between themselves and the defendants other than the tenant:—

Held, that as the area of the property had not been divided, as the rent had always been paid in its entirety, and as the title of the co-sharers remained *ijmaili*, the suit would not lie. ANNODA CHURN ROY *v.* KALLY COOMAR ROY. *Garth*,

* *Note.*—A *kurpha* tenant is an under-tenant of a ryot, also called *chukani* in Rungpore, and *prajai* (from *praja*), and generally *shikmi* or *petao* ryot. They usually cultivate on the terms of paying half produce.—Whinfield's *Law of Landlord and Tenant*, 17.

Digitized by Google

LANDLORD AND TENANT—*contd.*

C.J., and *McDonnell*, J. ..**I. L. Rep. 4 Cal. 89, 1878.**

5. —— Onus Probandi—*Non-Payment of Rent—Suit for Rent.*] In a suit to recover arrears of rent, the plaintiff stated that he was patnidar of certain lands, portion of which had been sub-let to the defendants; and he produced in support of his statement a rent decree obtained by his lessor in 1863 against two of the defendants and their ancestors. Those defendants stated that they had relinquished their jamma in 1863; and the other defendants contended that rent had never been realized from them, and denied the tenancy; and further contended that, as the plaintiff's lessor had withdrawn from a rent suit instituted against them in 1866, on their summoning him to appear as a witness, the decree obtained in 1863 was no proof that the relationship of landlord and tenant existed after 1863;—

Held, that the suit (in which the rent decree was passed in 1863) having been a suit between the predecessors in title of the parties to the present suit, and for rent of the same lands as were in dispute in the present suit, the decree in that suit established the relation of landlord and tenant in respect of the lands in question in that suit, and that relation having once been established, it continued as between the parties to that suit and their representatives in title, until it was proved to have ceased; and that it lay upon the defendants, therefore, to prove that that relationship had ceased. The withdrawal by the plaintiff's predecessor in title from the rent suit filed by him in 1866, did not put an end to the relationship of landlord and tenant established by the decree of 1866; and the relationship of landlord and tenant having been once proved, the mere non-payment of rent, though for many years, was not enough to show that the relationship had ceased to exist. The defendants were bound to show that it had ceased, by some affirmative proof; especially in a case where they did not expressly deny that they still continued to hold the lands in question. RUNGO LALL MUNDUL *v.* ABDOOL GUFFOOR. *Garth*, C. J., and *McDonnell*, J.. **I. L. Rep. 4 Cal. 314; 3 Cal. Rep. 119, 1878.**

6. —— *Rent Suit — Liability of Tenant—Rent due by former Tenant — Liability of Tenure.*] A landlord may, by obtaining a decree for rent against his registered tenant, bind the tenure itself in such sort as to make it always liable to be sold for the amount of the decree, although it may subsequently be purchased by a third person. In other words, the tenure thus bound continues subject to sale at the landlord's option, until the amount of the decree has been satisfied, notwithstanding the tenure may pass, by private sale or otherwise, into other hands. But the landlord's remedy in such a case is confined to the sale of such tenure under his decree. He cannot make a purchaser of such tenure personally liable for rent which accrued due before his purchase.

The remedies provided by the Rent Law for enforcing the payment of rent by sale of the tenure or by distress are remedies *in rem*. The personal liability of one tenant cannot be transferred to another; but each succeeding tenant must be subject to his own liabilities. RASH BEHARRY BUNDOPADHAYA *v.* PEARY MOHUN MOOKERJEE. *Garth*, C.J., and *McDonnell*, J...**I. L. Rep. 4 Cal. 346; 3 Cal. Rep. 116, 1878.**

7. —— *English Law of—Patnis, Darpatnis, and Sepatnis.*] "It seems to us that patnis, darpatnis, and sepatnis, although they may not be in strict analogy with leases in England, lie somewhere between out-and-out sales and leases, and that at all events they contain in themselves sufficient of the nature of a lease to incline us to give the grantee or taker, in cases where it is otherwise equitable, that protection which a lessor in England is understood to guarantee his lessee for possession of the land.

"It seems to have been thought, not only by Mr. Justice Kemp, but also by Sir Barnes Peacock, that the rules applicable to the relation of landlord and tenant in England, would be applicable in this country, whenever no precise rule regulating the subject is to be drawn from the Hindu or other common law, and certainly where those principles appear to be equitable, we should be inclined to apply them." *Per Jackson*, J. TARACHAND BISWAS *v.* RAM GOBIND CHOWDHRY....**I. L. Rep. 4 Cal. 778; 4 Cal. Rep. 20, 1879.**

S. C. under **Darpatni.**

8. —— *Lease granted while Lessor is out of Possession—Rights of Lessee—Suit for Possession.*] A transfer of property of which the transferor is not, at the time of the transfer, in possession, is not *ipso facto* void.

Digitized by Google

LANDLORD AND TENANT—*contd.*

Where a *patnidar*, while out of possession of the *patni* estate, granted a *darpatni* thereof :—*Held*, that the *darpatnidar's* suit against third persons, who were in possession of the estate, to recover possession, would lie, it appearing that the plaintiff had paid an adequate consideration for the *darpatni*, and there being nothing to show that the *darpatni pottah* was evidence of a contract to be performed in future on the happening of a certain contingency, or that, if it were so, the plaintiff had not done all he was bound to do to entitle him to specific performance of the agreement by the *patnidar*, but, on the contrary, the agreement showing that the transfer was in substance complete, and not only that the consideration money was paid, but that under certain contingencies it would be refunded. LOKENATH GHOSE *v.* JUGOBUNDHOO ROY. *Jackson* and *McDonnell*, JJ...**I. L. Rep. 1 Cal. 297, 1875.**

See **Ejectment. 2.**

TIERY *v.* KRISTODHUN BOSE...**L Rep. 1 I. A. 76.**

9. —— *Adverse Possession — Non-Payment of Rent*—Onus Probandi *of Determination of Tenancy.*] The plaintiffs, alleging that *S.* through whom they claimed, had given *B.*, who was represented by the defendants, in July 1828, a lease of a house, on condition that *B.* should pay a certain rent, and, that if he failed to do so, he should vacate the house, such condition being contained in a *Keraianama* executed by *B.* in *S.*'s favour, sued the defendants for the rent of such house for two years, and for possession thereof, alleging a breach of such condition :—

Held (*Spankie*, J., dissenting), that supposing a tenancy had arisen in the manner alleged, the mere non-payment of rent by the defendants for twelve years before the suit would not establish that the tenancy had ceased, and that the defendants had obtained a title by adverse possession so as to defeat the claim ; for if once the relation of landlord and tenant were established, it was for the defendants to establish its determination by affirmative proof over and above the mere failure to pay rent. PREM SUKH DAS *v.* BHUPIA.....**I. L. Rep. 2 All. 517, 1879, F. B.**

See **Limitation. 21.**

PORESH NARAIN ROY *v.* KASSI CHUNDER TALUKDAR...**I. L. Rep. 4 Cal. 661.**

LAND SEIZED AND SOLD OUT OF JURISDICTION IN EXECUTION OF DECREE—Eviction of Purchaser—Right to recover Purchase-Money.

See **Sheriff's Sale. 2.**

DORAB ALLY KHAN *v.* ABDOOL AZEEZ...**L. Rep. 5 I. A. 116; S. C. I. L. Rep. 3 Cal. 806.**

LAPSED BEQUEST — Qualifications annexed to Original Share not extended to Accruing Share, unless Express, or by Necessary Implication.

See **Will. 5.**

MASEYK *v.* FERGUSSON...**I. L. Rep. 4 Cal. 670.**

LAWFUL POLYGAMOUS MARRIAGE—Revocation of Will of Jew by.

See **Indian Succession Act X of 1865, § 56.**

GABRIEL *v.* MORDAKAI...**I. L. Rep. 1 Cal. 148.**

LEASE—By Person not in Possession.

See **Ejectment. 2.**

TIERY *v.* KRISTODHUN BOSE...**L. Rep. 1 I. A. 76.**

See **Landlord and Tenant. 8.**

LOKENATH GHOSE *v.* JUGOBUNDHOO ROY...**I. L. Rep. 1 Cal. 297.**

—— Registration of.

See **Lease.**

See **Registration. 11.**

RAMASWAMI CHETTI *v.* THE COLLECTOR OF MADURA...**L. Rep. 6 I. A. 170.**

—— *Registration Act VIII. of* 1871, § 3.] The defendant took certain lands from the plaintiff on the following agreement :—

"We undertake to cultivate the said land for the year 1872 at a rental of Rs.— —, which we agree to pay punctually. If you permit us to cultivate the land another year, we will pay the same rent as settled for 1872. If you choose to withdraw the land, we are not to object."

Held, that the agreement did not require registration. It was a *kabulayat* for one year certain, and an expression on the tenant's part of readiness to hold the land longer if the landlord desired it. Such an agreement did not, by the landlord's accepting it and allowing the

Digitized by Google

LEASE—*contd.*

tenant to enter, create in the tenant any interest extending beyond one year.

The "undertaking to cultivate or occupy" contemplated by § 3 of the Registration Act VIII. of 1871, is an undertaking accepted so as to give the tenant a right or interest in the land —not an undertaking to take up the land if the owner at some future time should desire it. APA BUDGAVDA *v.* NARHARI ANNAJEE. *West* and *Pinhey*, JJ...**I. L. Rep. 3 Bom. 21, 1878.**

LEASE BY ZEMINDAR—*Hindu Law—Madras Act VIII. of* 1865, § 11, *Rule IV.*] Under the Hindu Law the granting of a lease, though for a term, is an act within the scope of the zemindar's authority as manager and owner of the zemindary, and is, as such, binding on his successors, unless in the circumstances in which it was made, it was otherwise than *bonâ fide*.

The second proviso contained in Rule IV. of § 11 of Madras Act VIII. of 1865 does not apply to a lease which is *bonâ fide* and valid under the general Hindu Law, and, as such, falls under Rule 1. This proviso does not amount to a repeal of the Hindu Law regarding ordinary leases, but applies only to such leases when, in the circumstances in which they are made, they amount to a fraud upon the power of the grantor's successor as manager, or to alienations made for the *personal benefit* of the grantee and to the prejudice of the successor. RAMANADAN *v.* SRINIVASA MURTHI. *Morgan*, C.J., and *M. Ayyar*, J.....**I. L. Rep. 2 Mad. 80, 1878.**

LEASE OF ZEMINDARY RIGHTS.

See **Act XVIII. of 1873, § 95, Cl. m. 1.**

ABDUL AZZIZ *v.* WALI KHAN ..**I. L. Rep. 1 All. 338.**

LEAVE TO APPEAL—Granted *ultra Vires* by the Courts in India—Preliminary Objection.

See **Practice—Civil. 1.**

GAJADHUR PERSHAD *v.* THE TWO WIDOWS OF EMAM ALI BEG... **L. Rep. 2 I. A. 205.**

LEAVE TO SUE IN FORMA PAUPERIS—Petition for.

See **Petition for Leave to Sue in Forma Pauperis.**

LEAVE TO SUE IN FORMA PAUPERIS—*contd.*

—— Unsuccessful Application for—not a Demand by Way of Action.

See **Mahomedan Law—Dower. 1.**

RANEE KHAJOOROONISSA *v.* RANEE RYEESOONISSA...**L. Rep. 2 I. A. 235.**

LEGACY — Assignment of—by Legatee to Executor.

See **Will. 3.**

VAUGHAN *v.* HESELTINE ..**I. L. Rep 1 All. 753.**

HURST v. MUSSOORIE BANK ..... **Ibid. 762, 766.**

—— Bequest of—to Sole and Separate Use of Married Woman.

See **Married Woman's Separate Property. 2.**

HURST *v* MUSSOORIE BANK...**I. L. Rep. 1 All. 762.**

BERESFORD *v.* HURST...**Ibid. 772.**

LEGAL DISABILITY.

See **Pre-emption. 5.**

RAJA RAM *v.* BANSI...**I. L. Rep. 1 All. 207.**

LEGAL GUARDIAN—Right of—to Custody of Minor—Prostitution disqualifies.

Sea **Mahomedan Law—Guardian.**

ABASI *v.* DUNNE...**I. L. Rep. 1 All. 598.**

LEGAL OBLIGATION.

See **Setting aside Sale of Superior Tenure, Effect of.**

SREENARAIN BAGCHEE *v.* SMITH... **I. L. Rep. 4 Cal. 807.**

See **Liability of an Adopted Son, or of the Estate in his hands, for a Loan raised by his Mother for his Benefit.**

GADGEPPA DESAI *v.* APAJI JIVANRAO.....**I. L. Rep. 3 Bom. 237.**

LEGAL REPRESENTATIVE OF DECEASED HINDU.

See **Person taking Possession of Estate of a Deceased Hindu.**

PROSUNNO CHUNDER BHUTTACHARJEE *v.* KRISTO CHYTUNNO PAL...**I. L. Rep. 4 Cal. 342.**

Digitized by Google

LEGATEE—Assignment of Legacy by—to Executor.

See **Will. 8.**

VAUGHAN *v.* HESELTINE...**I. L. Rep. 1 All. 753.**

HURST *v.* MUSSOORIE BANK...**Ibid 762, 766.**

LEGISLATIVE POWER OF THE GOVERNOR GENERAL IN COUNCIL—*Jurisdiction of the High Court—Act VI. of* 1855—*Act XXII. of* 1869, §§ 9 *to* 24—*Stat.* 24 *and* 25 *Vict., C.* 67, § 22—*Stat.* 24 *and* 25 *Vict., C.* 104, §§ 9, 11, *and* 13—3 *and* 4 *Wm. IV., C.* 85—16 *and* 17 *Vict., C.* 95—17 *and* 18 *Vict., C.* 77—*Delegation.*] By Act XXII. of 1869 certain districts were removed from the jurisdiction of the High Court of Calcutta, and by § 5 the administration of civil and criminal justice was vested in such officers as the Lieutenant-Governor of Bengal should appoint. By § 9 the Lieutenant-Governor was empowered to extend all or any of the provisions of the Act to the Cossyah and Jynteeah Hills. By a notification in the Calcutta *Gazette* of 4th October 1871, the Lieutenant-Governor extended the provisions of the Act to the Cossyah and Jynteeah Hills, and directed that the Commissioner of Assam should exercise the powers of the High Court in the civil and criminal cases triable in the Courts of that district. The two prisoners were tried for murder in April 1876, and were on conviction sentenced by the Chief Commissioner of Assam to transportation for life. On appeal by the prisoner Burah to the High Court:—

Held by the majority of the full Bench (*Garth*, C.J., *Macpherson* and *Pontifex*, J.J., dissenting) that the High Court had jurisdiction to entertain the appeal, and that such jurisdiction was not taken away by Act XXII. of 1869.

Per Curiam.—The Governor-General in Council had power by legislation to remove the district from the jurisdiction of the Court.

Markby, J.—The jurisdiction of the High Court in the Cossyah and Jynteeah hills was one vested in the Nizamut Adawlat at the time of its abolition, and falls within Cl. 2, § 9 of Stat. 24 and 25 Vict., C. 104, and is by that clause expressly subjected to the legislative powers of the Governor-General in Council. The Legislature did not decide by Act XXII. of 1869 that the jurisdiction of the ordinary Courts should be excluded in the Cossyah and Jynteeah hills, but left the decision of that question to the absolute

LEGISLATIVE POWER OF THE GOVERNOR GENERAL IN COUNCIL—*contd.*

discretion of the Lieutenant-Governor. It was necessary, therefore, to consider whether it falls within the legislative power of the Governor-General in Council to delegate the power of determining whether or no a particular district of British India shall remain subject to the jurisdiction of the High Court. Stat. 24 and 25 Vict., C. 104, § 9, alone makes the High Court subject to any legislative control in this country. The High Court has power, and it is its duty, to inquire and decide whether an Act passed by the Legislative Council is within the scope of its powers. The Legislative Council exercises sovereign powers, but by delegation only, and is subordinate to the Imperial Parliament. The principle, that, where an authority involving personal trust and confidence in an agent is conferred on him by another to do acts on his behalf, such authority cannot be delegated, applies equally to public functionaries. Where Parliament has conferred on a Legislature the power of making laws, the only question can be, is the disputed Act a law? If it is, it is valid, unless it falls within some prohibition.

Act XXII. of 1869, so far as regards the Cossyah and Jynteeah Hills, is not a law or rule of action prescribed by a superior, which an inferior is bound to obey. The Legislative Council when it merely grants permission to another person to legislate does not make a law within the meaning of the Acts from which it derives its authority, *viz.*, Stat. 3 and 4 Wm. IV., C. 85,—16 and 17 Vict., C. 95—17 and 18 Vict., C. 77,—24 and 25 Vict., C. 67—and 33 Vict., C. 3; and therefore Act XXII. of 1869 is void.

Ainslie, J.—The question is, did the Supreme Indian Legislature itself, directly or by necessary implication, exclude the Cossyah and Jynteeah Hills from the territorial jurisdiction of the High Court? Such exclusion is within the powers of that Legislature. A provision that an Act shall come into operation, leaving it to the Lieutenant-Governor to fix a date of commencement, makes the fixing of that date a ministerial and not a legislative act; but a provision leaving it to the Lieutenant-Governor to decide whether the law shall be applied at all, makes such a decision a legislative and not a ministerial act. Act. XXII of 1869 did not itself

Digitized by Google

LEGISLATIVE POWER OF THE GOVERNOR GENERAL IN COUNCIL—*contd.*

do away with the jurisdiction of the High Court, and the conferring the power to take away that jurisdiction on the Lieutenant-Governor was *ultra vires*.

Per Jackson, Ainslie, Markby, and *Kemp,* JJ.—The power of delegation cannot be considered as validated by any long course of practice, nor as sanctioned by the tacit recognition of Parliament.

Per Ainslie, J.—A distinction is to be drawn between provisions by which the carrying out of the declared decisions of the Supreme Legislature is furthered, and those which give a power to act independently of the discretion of the Governor General in Council.

Macpherson, J.—The Governor General in Council has power by legislation to remove from the jurisdiction of the High Court a district over which that Court was declared by the Letters Patent to have jurisdiction. The Governor General in Council has no legislative power in relation to the High Court save what is reserved to him by Stat. 24 and 25 Vict., C. 104, §§ 9, 11, and 13. But § 9 gives the Governor General in Council plenary powers of legislation as regards the jurisdiction of the High Court. An Act passed by the Governor General in Council under Stat. 24 and 25 Vict., C. 67, and not falling within any of the prohibitions therein contained, has the same effect as an Act of Parliament, and the High Court has no power to question the authority of the Governor General in Council if satisfied that the Act is not within any of the prohibitions of the Councils Act.

The jurisdiction of the High Court over the Jynteeah and Cossyah hills is taken away by Act XXII. of 1869, which, though practically a delegation to the Lieutenant-Governor of the legislative powers of the Governor General in Council is not therefore illegal. Such delegation is not prohibited by any positive law.

Per Garth, C.J., *Macpherson* and *Pontifex,* JJ.—The power of delegation now questioned had been exercised in many cases for a series of years previous to the passing of the Indian Councils Act, and that Act (the framers of which must have been cognizant of the course of practice) must be taken as impliedly approving of and sanctioning such practice which it would otherwise have declared illegal.

Per Garth, C.J., *Anslie, Markby,* and *Jackson,* JJ.—The High Court has power to question the validity of the legislative Acts of the Governor General in Council.

Per Macpherson and *Pontifex,* JJ.—It has no such power if satisfied that the Act is not within the prohibitions of the Indian Councils Act. EMPRESS *v.* BURAH...**I. L. Rep. 3 Cal. 63, 1877, F. B.**

Reversed on appeal—*see infra.*

2. —— *Jurisdiction of High Courts—Stat. 24 and 25 Vict.,* C. 104—*Act XXII. of* 1869.] By the terms of Stat. 24 and 25 Vict., C. 104, the exercise of jurisdiction in any part of Her Majesty's Indian territories by the High Courts was meant to be subject to, and not exclusive of, the general legislative power of the Governor General in Council.

An exercise of legislative authority by the Governor General in Council which removes any place or territory from the jurisdiction of the High Courts, is one expressly contemplated and authorized by Stat. 24 and 25 Vict., C. 104, and 24 and 25 Vict., C. 67, and by the Letters Patent of the High Courts issued under Stat. 24 and 25 Vict., C. 104. By § 9 of Act XXII. of 1869, the Lieutenant-Governor of Bengal was empowered, from time to time, to extend, *mutatis mutandis,* to the Jynteeah, Naga, and Khasi Hills, the provisions contained in other sections of the Act, whereby the administration of civil and criminal justice within the district called the Garo Hills was, from a date to be fixed by the Lieutenant-Governor, to be withdrawn from the jurisdiction of the Courts of civil and criminal justice constituted by the Regulations of the Bengal Code and the Acts of the Legislature of British India, and to be vested in such officers as the Lieutenant-Governor might appoint.

Held, by a majority of the Calcutta High Court, that as the Indian Legislature was to be regarded as an agent or delegate, acting under a mandate from the Imperial Parliament, which must in all cases be executed directly by itself, the above provisions purporting to authorize the Lieutenant-Governor of Bengal to extend Act XXII. of 1869 to the Jynteeah, Naga, and Khasi Hills, since they involved a delegation of legislative power, were void and of no effect.

Held by the Privy Council, that the decision of the High Court was erroneous, and rested on a mistaken view of the powers of the Indian Legislature, and of the nature and principles of

Digitized by Google

LEGISLATIVE POWER OF THE GOVERNOR GENERAL IN COUNCIL—*contd.*

legislation. The Indian Legislature has power expressly limited by the Act of the Imperial Parliament which created it, and can do nothing beyond the limits which circumscribe those powers. But, when acting within those limits it is not in any sense an agent or delegate of the Imperial Parliament, but has, and was intended to have, plenary powers of legislation as large, and of the same nature, as those of Parliament itself. When a question arises whether the prescribed limits have been exceeded, it must be determined by looking to the terms of the instrument by which, affirmatively, the legislative powers were created, and by which negatively, they are restricted. If what has been done is legislation within the scope of the affirmative words which give the power, and if it violates no express condition or restriction by which that power is limited, it is not for any Court of Justice to inquire further, or to enlarge constructively those conditions and restrictions.

Where plenary powers of legislature exist as to particular subjects, whether in an Imperial or in a Provincial Legislature, they may be well exercised, either absolutely or conditionally. Legislation conditional on the use of particular powers, or on the exercise of a limited discretion, entrusted by the Legislature to persons in whom it places confidence, is no uncommon thing; and in many circumstances it may be highly convenient. EMPRESS *v.* BURAH...**I. L. Rep. 4 Cal. 172, 1878, P. C.; L. Rep. 5 I. A. 178; L. Rep. 3 App. Ca. 889; 3 Cal. Rep. 197.**

LEGITIMACY—Child born in Wedlock though conceived before Marriage.

See **Hindu Law—Legitimacy.**

THE COLLECTOR OF TRICHINOPOLY *v.* LEKKAMANI.....**L. Rep. 1. I. A. 282-293.**

—— Question of—decided in Execution Proceedings.

See **Execution of Decree. 9.**

ABEEDOONNISSA *v.* AMEEROONISSA. **L. Rep. 4 I. A. 66; I. L. Rep. 2 Cal. 327.**

LEPROSY.

See **Hindu Law—Disqualification to Inherit. 6.**

ANANTA *v.* RAMABAI...**I. L. Rep. 1 Bom. 554.**

LESSEE.

—— Authority of—to bind Owner by attesting Village Administration Paper.

See **Pre-emption. 10.**

CHADAMI LAL *v.* MUHAMAD BAKSH.....**I. L. Rep. 1 All. 563.**

LESSEE OF JALKAR CANNOT ACQUIRE RIGHT OF OCCUPANCY.

See **Right of Occupancy. 6.**

BOLLYE SATEE *v.* AKRAM ALLY... **I. L. Rep. 4 Cal. 961.**

LETTER "WITHOUT PREJUDICE."

See **Privileged Communication. 1.**

HOWARD *v.* WILSON...**I. L. Rep. 4 Cal. 231, 236.**

LETTERS OF ADMINISTRATION TO ADMINISTRATOR GENERAL.

See **Administration. 5.**

LETTERS OF ADMINISTRATION WITH WILL ANNEXED—Grant of—may be made after Seven Days from Testator's Death.

See **Indian Succession Act X. of 1865, § 258.**

In the Goods of WILSON.....**I. L. Rep. 1 Cal. 149.**

LETTERS PATENT—ALLAHABAD— Cl. 10—Appeal not confined to Point of Difference between Judges of Division Bench.

See **Appeal—Civil. 17.**

RAM DIAL *v.* RAM DAS.....**I. L. Rep. 1 All. 181.**

1. —— Cl. 10.—*Judgment—Appeal.*] To allow of an appeal to the High Court of Allahabad against the judgment of a Division Bench, there must be such a judgment on the part of all the Judges who may constitute a Bench, as disposes of the suit on appeal before it. Therefore, where on an appeal heard before a Division Bench, consisting of the Chief Justice and another Judge, the Chief Justice remanded the suit for further evidence on a particular point

Digitized by Google

LETTERS PATENT — ALLAHABAD —*contd.*

while the other Judge was of opinion that the appeal should be dismissed :—

Held, that no appeal lay from the order of the Chief Justice. GHASI RAM *v.* MUSAMAT NURAJ BEGUM.....**I. L. Rep. 1 All. 31, 1875, F. B.**

2. —— Cl. 10. — *Appeal — Computation of Period of Limitation—Copy of Judgment appealed from.*] In computing the period of limitation prescribed for an appeal under Cl. 10 of the Letters Patent, the time requisite for obtaining a copy of the jugdment appealed from cannot be deducted, such copy not being required, under the rules of the Court, to be presented with the memorandum of appeal. FAZAL MUHAMMAD *v.* PHUL KUAR.....**I. L. Rep. 2 All. 192, 1879, F. B.**

See **Limitation. 90.**

JAWAHIR LAL *v.* NARAIN DAS...**I. L. Rep. 1 All. 644.**

—— Cl. 31—Repealed by Implication by Act VI. of 1874 and Act X. of 1877.

See **Appeal to the Privy Council. 5.**

TETLEY *v.* JAI SHANKAR.....**I. L. Rep. 1 All. 726.**

LETTERS PATENT—BOMBAY—1865.

Cl. 12—*Jurisdiction—Cause of Action*—Hundi—*Consideration.*] The High Courts are not Courts of ordinary original Civil jurisdiction over the whole of the territories of the Presidencies to which they belong. Though in some respects their original Civil jurisdiction is wider than that of the District Courts, yet it is limited, and there is no presumption in favour of jurisdiction beyond what is to be found expressly conferred by the Charters of constitution.

The English decisions, as to the meaning of the words "cause of action," on the County Courts Act 9 and 10 Vict., C. 95, § 128, are more in point with regard to the interpretation of the same words in the Letters Patent, than are those in §§ 18 and 19 of the Common Law Procedure Act of 1852 (15 and 16 Vict., C. 76), as the provisions of the latter statute concern matters of procedure, *i.e.*, they furnish a less cumbrous and simpler means of exercising a jurisdiction the Courts already had, and are not, as the provisions of the English County Courts Act and the Letters Patent of the High Court, directed to the marking out and limiting the jurisdiction of a Court.

LETTERS PATENT—BOMBAY — 1865 —*contd.*

Where a *hundi* had been drawn out of Bombay on a person in Bombay, indorsed and delivered out of Bombay to one who out of Bombay indorsed the same and sent it to a person who in Bombay received it, got it accepted, and presented it for payment to the drawee, by whom it was dishonoured :—*Held*, that the dishonour of the *hundi* by the drawee in Bombay was a material part of the cause of action of the Bombay holder against the first indorser, and the leave of the Court having been obtained by the holder to bring his suit under Cl. 12 of the Letters Patent, 1865, the Court had jurisdiction to entertain the suit.

The plaintiff, as agent and banker of an Ajmir constituent, received a *hundi* for collection, and on its acceptance by the drawee, credited the Ajmir constituent in his account with the amount of the *hundi* as of the date when it would become payable, reducing to that extent the balance due to the plaintiff on that account.

Held, that, as between the plaintiff and the Ajmir constituent, the plaintiff on such credit in account being given became a holder for value.

Held, also, that on the dishonour of the *hundi* at due date the plaintiff was justified by the usage of *shroffs* in treating the Ajmir constituent as still entitled to credit for the *hundi*, and in treating themselves as holders of the same for value.

Held, also, that as between the Ajmir constituent and the first indorser (the defendant), the giving by the Ajmir constituent to the defendant another *hundi* which was never presented in Bombay for acceptance or payment, was a consideration for the indorsement by the defendant to the Ajmir constituent of the *hundi* sent by the latter to the plaintiff, and sued on by him. SUGANCHAND SHIVDAS *v.* MULCHAND JOHARIMAL. *Green*, J.....**12 Bom. H. C. Rep. 113, 1875.**

Affirmed on appeal ... **I. L. Rep. 1 Bom. 23.**

—— Cl. 26—Improper Admission of Evidence—Power of High Court, on Case Reserved or Certified, to consider the Merits.

See **Evidence. 13.**

REG *v.* HURRIBOLE ... **I. L. Rep. 1 Cal. 207.**

Digitized by Google

LETTERS PATENT — BOMBAY—1865 —*contd.*

See **Power of the High Court, on Case Reserved or Certified, to consider the Merits of the Case.**

REG. *v.* PITAMBER JINA.....**I. L. Rep. 2 Bom. 61.**

—— § 36— *Act X. of* 1877, § 575.] The provisions of § 36 of the Letters Patent, that when the Judges of a Division Bench are divided in opinion, the opinion of the Senior Judge shall prevail, have been superseded by § 575 of Act X. of 1877 (which is extended to miscellaneous proceedings of the nature of appeals by § 647), so far as regards cases to which § 575 is applicable. APPAJI BHIVRAV *v.* SHIVLAL KHUBCHAND ..**I. L. Rep. 3 Bom. 204, 1879, F. B.**

S. C. under **Sureties.**

LETTERS PATENT — CALCUTTA — Cl. 11.

See **Title Deeds—Suit for.**

JUGGORNATH DOSS *v.* BRIJNATH DOSS..**I. L. Rep. 4 Cal. 322.**

—— Cl. 12—Application to file Award.

See **Suit for Land. 3.**

KELLIE *v.* FRASER...**I. L. Rep. 2 Cal. 445.**

—— Cl. 12—Goods obtained in Calcutta by Fraud in Calcutta—Pledge of—beyond Local Limits of Jurisdiction of High Court.

See **Jurisdiction. 12.**

KARTIK CHURN *v.* GOPALKISTO... **I. L. Rep. 3 Cal. 264.**

—— Cl. 12—Suit to restrain Working of Mine within certain Boundaries—Suit for Land.

See **Suit for Land. 1.**

E. I. RY. CO. *v.* BENGAL COAL CO. **I. L. Rep. 1 Cal. 95.**

—— Cl. 12—Suit for Land—Deed of Trust giving Trustees Power of Sale of Land in Mofussil—Suit by Creditor to have Trusts carried out.

See **Suit for Land. 2.**

DELHI AND LONDON BANK *v.* WORDIE...**I. L. Rep. 1 Cal. 249.**

1.—— Cl. 15.—*Appeal from Order granting Certificate under Act VI. of* 1874.] Under Cl. 15 of the Letters Patent of the High Court at Calcutta, no appeal lies from the order of the Judge in the Privy Council Department granting a certificate that the case is a fit case for appeal to Her Majesty in Council. MOWLA BUKSH *v.* KISHEN PERTAB SAHI. *Macpherson*, C. J. (Offg.), and *Jackson*, J....**I. L. Rep. 1 Cal. 102, 1875.**

LETTERS PATENT — CALCUTTA — *contd.*

2.—— Cl. 15. *Appeal — Judgment — Decision on one of several Issues.*] In a suit for the construction of a will and *hibbanama*, on the case coming on for settlement of issues, the Judge in the Court below held that the *hibbanama* was invalid, and raised issues as to the execution and validity of the will. Two of the defendants claiming under the *hibbanama* appealed:—*Held*, that the appeal did not lie, the decision appealed against not being a judgment or decree which determined or affected the entire claim of the plaintiff, but only a decision arrived at on the settlement of issues, on the validity of a *hibbanama* set up by the defendant as an answer to part of the plaintiff's claim.

Per Garth, C.J.—The word "judgment" in Clause 15 of the Letters Patent means a judgment or decree which decides the case one way or the other in its entirety, and does not mean a decision or order of an interlocutory character, which merely decides some isolated point, not affecting the merits or result of the entire suit.

Per Markby, J.—The matter was more one of convenience and procedure than of strict law. EBRAHIM *v.* FUCKHRUNISSA BEGUM. *Garth*, C.J., and *Markby*, J...**I. L. Rep. 4 Cal. 531; 3 Cal. Rep. 311, 1878.**

—— Cl. 16.

See **Appeal—Civil. 9.**

RUNJIT SINGH *v.* MEHERBAN KOER. **I. L. Rep. 3 Cal. 662.**

—— Cl. 26—Power of High Court, on Case Reserved or Certified, to consider Case on Merits.

See **Evidence. 13.**

REG. *v.* HURRIBOLE...**I. L. Rep. 1 Cal. 207.**

See **Power of the High Court, on Case Reserved or Certified, to consider the Merits of the Case.**

REG. *v.* PITAMBER JINA...**I. L. Rep. 2 Bom. 61.**

Digitized by Google

LETTERS PATENT — CALCUTTA — *contd.*

— Cl. 39.

See **Act VI. of 1874, § 5.**

FEDA HOSSEIN ... **I. L. Rep. 1. Cal. 431**

LETTERS PATENT (1865) — MADRAS.

See **Jurisdiction. 13.**

COLLECTOR OF SEA CUSTOMS, MADRAS, *v.* PUNNIAR CHITHAMBARAM...**I. L. Rep. 1 Mad. 89.**

— Cl. 9.

See **Rules of Court. 1.**

In the matter of the Petition of the ATTORNEYS...**I. L. Rep. 1 Mad. 24.**

— Cl. 15—Appeal from Order under Administrator Generals' Act II. of 1874 ascertaining Commission payable to Administrator General, appealable.

See **Administrator Generals' Act II. of 1874, § 27.**

SOMASUNDARAM CHETTI *v.* ADMINISTRATOR GENERAL...**I. L. Rep. 1 Mad. 148.**

LEX LOCI CONTRACTUS.

See **Contract. 17.**

OAKES & Co. *v.* JACKSON...**I. L. Rep. 1 Mad. 134.**

See **Jurisdiction. 7.**

MATHAPPA CHETTI *v.* CHELLAPA CHETTI...**I. L. Rep. 1 Mad. 196.**

LIABILITY OF AN ADOPTED SON, OR OF THE ESTATE IN HIS HANDS, FOR A LOAN RAISED BY HIS MOTHER FOR HIS BENEFIT — *Legal Obligation.*] *H.*, a widow who, in default of issue to her husband, was in possession of a *Deshgati Inam*, borrowed money from the plaintiff on an ordinary money bond for the purpose of paying the Government assessment thereon. She afterwards adopted a son (the defendant), and died. The plaintiff sued the son to recover the money from him personally, and also sought to make the *Deshgati Inam* liable :—*Held*, that neither the defendant personally, nor the *Deshgati Inam* in his hands, could be made liable because the estate had been benefited by the loan. The plaintiff might have secured himself by taking

LIABILITY OF AN ADOPTED SON, OR OF THE ESTATE IN HIS HANDS, FOR A LOAN RAISED BY HIS MOTHER FOR HIS BENEFIT—*contd.*

a mortgage on the property, instead of which he trusted to *H.*'s personal security. Although it might be that if *H.* had been compelled to repay the loan, she might have recovered the amount from the defendant, yet the defendant could not be made liable at the suit of the plaintiff. It is not in every case in which a man has been benefited by the money of another, that an obligation to repay that money arises. To support such a suit there must be an obligation, express or implied, to repay. The plaintiff's only remedy in this case was against *H.*'s property (if any) in the hands of the defendant. GADGEPPA DESAI *v.* APAJI JIVANRAO. *Melvill* and *West*, JJ...**I. L. Rep. 3 Bom. 237, 1879.**

LIABILITY OF ANCESTRAL PROPERTY IN THE HANDS OF THE HEIR FOR THE DEBTS OF THE ANCESTOR.

See **Hindu Law — Alienation of Ancestral Property. 1. 2. 3. 4. 5.**

See **Hindu Law—Undivided Family. 3. 4. 7. 8.**

See **Hindu Law—Liability of Ancestral Estate in the hands of the Heir for the Debts of the Ancestor.**

See **Sale in Execution of Decree. 10 15.**

See **Limitation. 38a.**

See **Onus Probandi. 8.**

ADURMONI DEVI *v.* CHOWDHRY SIB NARAIN KUR...**I. L. Rep. 3 Cal. 1.**

LIABILITY OF CO-SHARERS OF A PUTNI TALUK—Mortgage by some Co-Sharers to pay Quota of Rent—Payment by Mortgagee to prevent Sale for Arrears of Zemindary Rent.

See **Co-Sharers of Putni Taluk.**

MOHESH CHUNDER *v.* RAM PROSUNNO ... **I. L. Rep. 4 Cal. 589.**

Digitized by Google

LIABILITY OF EXECUTION CREDITOR—To refund Purchase Money on Eviction of Purchaser at Sale by Sheriff under Writ of *Fieri Facias* on Sale being declared Void.

See **Sheriff's Sale. 1. 2.**

DORAB ALLY KHAN *v.* KHOJAH MOHEEODEEN...**I. L. Rep. 1 Cal. 55 ; I. L. Rep. 3 Cal. 806 ; L. Rep. 5 I. A. 116.**

LIABILITY OF EXECUTION CREDITOR IN DAMAGES FOR WRONGFUL SEIZURE—*Attachment of Property of Third Person—Loss of Property while under Attachment—Measure of Damages.*] Certain unthreshed rice, the property of the plaintiff, was wrongfully attached by the defendants under a money decree obtained by them against their debtor *D.* The rice, while in custody of a bailiff of the Court *nazir*, in the same place in which it had been attached, was clandestinely threshed and carried off by thieves, who left the straw. The attachment had been made under a special warrant naming the rice, which warrant was founded on a *darkhast* presented to the Court by the defendants, and which prayed, not the attachment of the moveable property at large of the judgment-debtor, but of the rice in particular as his property.

In a suit brought by the plaintiff to recover the value of the unthreshed rice from the defendants, both the lower Courts dismissed the plaintiff's claim, on the ground that the theft was not the immediate probable result of the attachment, and that the conduct of the defendant had not in any way conduced to the loss of the rice.

Held, by the High Court, reversing the decrees of the lower Courts, that the defendants were liable. When the wrongful seizure was made at the special instance of the defendants, the plaintiff's cause of action was complete, and was independent of the subsequent occurrence. The theft might have rendered the defendants unable to restore the rice *in specie*, but could not purge, and was no satisfaction of the previous trespass, which rendered the defendants liable for the full value of the rice.

The measure of damages should be the value of the rice as it stood at the time of the wrongful attachment made at the instance of the defendants. The plaintiff was not bound to accept the straw left by the thieves when they stole the rice, severed as that straw had been from the

LIABILITY OF EXECUTION CREDITOR IN DAMAGES FOR WRONGFUL SEIZURE—*contd.*

rice. If, however, he did accept the straw, that circumstance should be received in mitigation of damages, and the value of the straw as it stood *at the time of such acceptance* (if any) should be deducted from the value of the rice and straw when unsevered from each other at the time of the laying on of the attachment.

Mussamat Subjan Bibi v. *Sheikh Sariatulla* (3 Beng. L. Rep. 413) commented on and partially dissented from. [*See* Table of Cases Reversed, Overruled, Dissented from, and Commented on.] GOMA MAHAD PATIL *v.* GOKALDAS KHIMJI. *Westropp*, C.J., and *Kemball*, J...**I. L. Rep 3 Bom. 74, 1878.**

LIABILITY OF GOVERNMENT FOR ACTS DONE IN EXERCISE OF SOVEREIGN POWERS.

See **Right to Sue. 7.**

NOBIND CHUNDER DEY *v.* THE SECRETARY OF STATE FOR INDIA...**I. L. Rep. 1 Cal. 11.**

LIABILITY OF HEIR FOR DEBTS OF ANCESTOR.

See **Hindu Law—Alienation of Ancestral Property. 1. 2. 3. 4. 5.**

See **Hindu Law—Undivided Family. 3. 4. 7. 8.**

See **Hindu Law—Liability of Ancestral Estate in the hands of the Heir for the Debts of the Ancestor.**

See **Sale in Execution of Decree. 10. 15.**

See **Limitation. 38a.**

LIABILITY OF HUSBAND ON CONTRACTS ENTERED INTO BY WIFE IN COURSE OF A SEPARATE BUSINESS CARRIED ON BY WIFE ALONE.

See **Married Woman's Property Act III. of 1874. 1.**

ALLUMUDDY *v.* BRAHAM.....**I. L. Rep. 4 Cal. 140.**

Digitized by Google

LIABILITY OF INFANT FOR DEBTS INCURRED BY GUARDIAN IN ANCESTRAL TRADE CARRIED ON FOR BENEFIT OF INFANT.

See **Hindu Law—Ancestral Trade.**

JOYKISTO COWAR *v.* NITTYANUND NUNDY ..**I. L. Rep. 3 Cal. 738.**

LIABILITY OF LAMBARDAR TO CO-SHARER FOR PROFITS—*Act XVIII. of* 1873, § 209—*Land in a Mahal held by the Lambardar as "Khud-Kasht" at a Nominal Rent.*] The land in a certain Mahal was recorded as held by *M.*, the lambardar, as "khud-kasht" (*i.e.*, land which the proprietor cultivates himself), at a certain nominal rent. For two years in succession *M.* sub-let such land, in part or in whole, for a less amount than such nominal rental; the third year the land lay fallow. The plaintiffs sued as co-sharers in the mahal to recover from *M.* their share of the profits on account of such years. *M.* set up as a defence that there were no profits, but, on the contrary, a small loss. The lower Courts held *M.* answerable for the rental recorded :—*Held*, that it was doubtful whether the provisions of § 209 of Act XVIII. of 1873 were applicable in the present case, and that, even if such provisions were applicable, the lower Courts having neither found that more was realized from the land than had been accounted for by *M.*, nor that the failure to realize more was owing to gross negligence or misconduct on his part, the decree of the lower Courts could not be sustained. MANGAL KHAN *v.* MUMTAZ ALI. *Pearson* and *Oldfield*, JJ...**I. L. Rep. 2 All. 239, 1879.**

LIABILITY OF LAND PURCHASED FROM HINDU DEVISEE FOR DEBTS OF TESTATOR.

See **Limitation. 38a.**

GREENDER CHUNDER *v.* MACKINTOSH.....**I. L. Rep. 4 Cal. 897.**

LIABILITY OF MASTER FOR THE WRONGFUL ACTS OF HIS SERVANT.

See **Principal and Agent. 1.**

BOMBAY BURMAH TRADING CORPORATION *v.* MIRZAH MAHOMED ALLY...**I. L. Rep. 4 Cal. 116**; S. C. **L. Rep. 5 I. A. 130.**

LIABILITY OF MORTGAGEE IN POSSESSION TO PAY GOVERNMENT ASSESSMENT.

See **Kabulayatdar Khot.**

KRISHNAJI *v.* RAMCHANDRA ...**I. L. Rep. 1 Bom. 70.**

LIABILITY OF MORTGAGEE IN POSSESSION OF INDIGO FACTORY FOR DEBTS OF FACTORY.

See **Indigo Factories. 1.**

MONOHUR DOSS *v.* MCNAGHTEN ... **I. L. Rep. 3 Cal. 231.**

LIABILITY TO PAY RENT—ADMISSION OF, BY TENANT—Non-Payment by Occupancy Ryot for more than Twelve Years gives him no Title.

See **Limitation. 21.**

PORESH NARAIN ROY *v.* KASSI CHUNDER TALUKDAR..... **I. L. Rep. 4 Cal. 661.**

LIABILITY OF PRINCIPAL FOR THE WRONGFUL ACT OF HIS AGENT. 1.

See **Principal and Agent. 1.**

BOMBAY BURMAH TRADING COMPANY, LIMITED, *v.* MIRZA MAHOMED ALLY SHERAZEE ... **L. Rep. 5 I. A. 130**; S. C. **I. L. Rep. 4 Cal. 116.**

LIABILITY OF PROPERTY ON WHICH DUTY HAS BEEN PAID IN ENGLAND, TO PAY DUTY IN INDIA.

See **Administration. 4.**

In the Goods of MURCH.....**I. L. Rep. 4 Cal. 725.**

See **Probate Duty. 2.**

In the Goods of GLADSTONE...**I. L. Rep. 1 Cal. 168.**

LIABILITY OF PURCHASER AT EXECUTION SALE FOR GOVERNMENT REVENUE FALLING DUE BETWEEN SALE AND CONFIRMATION.

See **Sale in Execution of Decree. 3.**

BHYRUB CHUNDER *v.* SOUDAMINI... **I. L. Rep. 2 Cal. 141.**

Digitized by Google

LIABILITY OF SHARE OF A NEXT OF KIN OF AN INTESTATE FOR A TIME-BARRED DEBT DUE TO INTESTATE.

See **Administration. 1.**

DHANJIBHAI *v.* NAVAZBAI...**I. L. Rep. 2 Bom. 75.**

LIABILITY OF SON FOR THE DEBTS OF HIS FATHER.

See **Hindu Law—Alienation of Ancestral Property. 1 to 5.**

See **Hindu Law — Undivided Family. 3. 4. 7. 8.**

See **Hindu Law—Liability of Ancestral Estate in the hands of the Heir for the Debts of the Ancestor.**

See **Limitation. 38a.**

See **Sale in Execution of Decree. 10. 15.**

LIABILITY OF SON FOR DEBTS OF FATHER.

See **Onus Probandi. 8.**

ADURMONI DEVI *v.* CHOWDHRY SIB NARAIN KUR...**I. L. Rep. 3 Cal. 1.**

LIABILITY OF STRANGER TO THE RECORD FOR COSTS OF SUIT.

See **Champerty. 2.**

RAM COOMAR *v.* CHUNDER CANTO. **L. Rep. 4 I. A. 23; I. L. Rep. 2 Cal. 233.**

LIABILITY OF TENANT FOR RENT DUE BY FORMER TENANT.

See **Landlord and Tenant. 6.**

RASH BEHARY *v.* PEARY MOHUN... **I. L. Rep. 4 Cal. 346.**

LIABILITY OF TENURE FOR RENT DUE BY FORMER TENANT.

See **Landlord and Tenant. 6.**

RASH BEHARY *v.* PEARY MOHUN... **I. L. Rep. 4 Cal. 346.**

LIABILITY OF UNDIVIDED ANCESTRAL PROPERTY FOR THE SEPARATE DEBT OF A DECEASED COPARCENER IN AN UNDIVIDED HINDU FAMILY.

See **Hindu Law—Undivided Family. 9.**

NARSINBHAT *v.* CHENAPA...**I. L. Rep. 2 Bom. 479.**

LIABILITY OF UNDIVIDED HINDU FOR DEBTS OF A DECEASED BROTHER.

See **Hindu Law—Undivided Family. 9.**

NARSINBHAT *v.* CHENAPA...**I. L. Rep. 2 Bom. 479.**

LIABILITY OF UNDIVIDED SHARE IN ANCESTRAL PROPERTY OF MEMBER OF UNDIVIDED HINDU FAMILY TO ATTACHMENT AND SALE IN EXECUTION OF DECREE.

See **Bombay Act V. of 1862.**

ARDASIR *v.* MUSE...**I. L. Rep. 1 Bom. 601.**

See **Civil Procedure Code, Act VIII. of 1859, § 269.**

KALAPA *v.* VENKATESH...**I. L. Rep. 2 Bom. 676.**

See **Hindu Law — Alienation of Ancestral Property. 1 to 5.**

BHIKAN DAS *v.* PURA...**I. L. Rep. 2 All. 141.**

GIRDHAREE LAL *v.* KANTOO LAL. **L. Rep. 1 I. A. 321; 14 Beng. L. Rep. 187.**

MUSST. PHOOLBAS KOONWAR *v.* LALLA JOGESHUR SAHOY...**L. Rep. 3 I. A. 7; I. L. Rep. 1 Cal. 226.**

SURAJ BANSI KOER *v.* SHEO PERSHAD SINGH...**L. Rep. 6 I. A. 88.**

JALLIDAR SINGH *v.* RAM LAL... **I. L. Rep. 4 Cal. 723.**

See **Hindu Law—Liability of Ancestral Estate in the hands of the Heir for the Debts of the Ancestor.**

NARRAYAN *v.* NAROO...**I. L. Rep. 1 Bom. 262.**

See **Hindu Law—Undivided Family. 3. 4. 7. 8.**

DEENDAYAL LAL *v.* JUGDEEP NARAIN SINGH...**L. Rep. 4 I. A. 247; I. L. Rep. 3 Cal. 198.**

RAI NARAIN DAS *v.* NOWNIT LAL. **I. L. Rep. 4 Cal. 809.**

LACHMI DAI KOORI *v.* ASMAN SINGH.....**I. L. Rep. 2 Cal. 213.**

Digitized by Google

LIABILITY OF UNDIVIDED SHARE IN ANCESTRAL PROPERTY OF MEMBER OF UNDIVIDED HINDU FAMILY TO ATTACHMENT AND SALE IN EXECUTION OF DECREE—*contd.*

BABAJI *v.* VASADEO...I. L. Rep. 1 Bom. 95.

See **Limitation. 38a.**

GREENDER CHUNDER GHOSE *v* MACKINTOSH...I. L. Rep. 4 Cal. 897.

See **Onus Probandi. 8.**

ADURMONI DEVI *v.* CHOWDHRY SIB NARAIN KUR...I. L. Rep. 3 Cal. 1.

See **Sale in Execution of Decree. 10. 15.**

VENKATARAMMAYYAN *v.* VENKATASUBBRAMANIA...I. L. Rep. 1 Mad. 358.

VENKATASAMI *v.* KUPPAIYA.. Ibid 543.

LIABILITY OF UNDIVIDED SHARE OF DECEASED MEMBER OF UNDIVIDED HINDU FAMILY GOVERNED BY MITAKSHARA LAW FOR HIS DEBTS, UNDER DECREES AGAINST HIS WIDOWS AS HIS REPRESENTATIVES.

See **Hindu Law—Alienation of Ancestral Estate. 3.**

MUSST. PHOOLBAS KOONWAR *v.* LALLA JOGESHUR SAHOY... L. Rep. 3 I. A. 7; I. L. Rep. 1 Cal. 226.

LIABILITY OF ZEMINDAR FOR DAMAGE DONE BY TANKS.

See **Tanks**

MADRAS RAILWAY CO. *v.* ZEMINDAR OF CARVATENAGARUN...L. Rep. 1 I. A. 364.

LIBEL—Injunction to restrain a.

See **Injunction. 3.**

SHEPHERD *v.* THE TRUSTEES OF THE PORT OF BOMBAY...I. L. Rep. 1 Bom. 132.

LIBEL—*contd.*

1. —— *Publication — Privilege — Practice — Costs.*] The Trustees for the Port of Bombay, who are, under the provisions of their Act of Incorporation (Bombay Act I. of 1873), bound to keep minutes of their proceedings and resolutions, and to forward copies of such minutes to the Secretary to the Local Government, passed, in relation to the hiring by them to the plaintiff of one of their steamers, the following resolution:—"Mr. Shepherd's (the plaintiff's) offer of Rs. 520 in full of all claims should be accepted, but any further transactions with him should be avoided if possible." Copies of this resolution, made by clerks in the employ of the Trustees, were recorded in two books kept in the office of the Trustees; and other copies, also made by such clerks, were forwarded to the Local Government and to the plaintiff himself.

The plaintiff alleged in his plaint that the words of the resolution meant "that the plaintiff was an unfair dealer, and a person with whom ordinary mercantile affairs, and especially the business of the defendants, could not safely be transacted, and should, therefore, be avoided."

Held, *1st*—That it is for the plaintiff, in a suit for libel, to establish that the words in question did, in fact, mean what he alleges, and not merely that they were capable of bearing such meaning; and where the libel or slander is couched in ordinary English words not words of art, or slang, it is not admissible to ask witnesses in what sense they understood them; and that though the words of the resolution did not, in the opinion of the Court, bear the meaning ascribed to them by the plaintiff, yet they did, apart from the question whether they were justified, and whether the publication of them was privileged, amount to a libel in law.

2nd—That the sending of written defamatory matter to the person himself who is affected by it, though it *may* form a ground for *criminal* proceedings, is, so far as a civil action for damages is concerned, protected, and does not constitute a cause of action; and the only acts of publication alleged in the plaint were the transmission to the plaintiff of the resolution; yet the issue having been raised generally as to the fact of publication, admitted of evidence of acts of publication other than those alleged in the plaint, and that the transmission of the resolution in question to the Secretary to Government constituted a publication of the libel.

3rd—Though from the publication of defamatory matter, false in fact, the law will presume malice, yet when the occasion and circumstances of the publication are such as to exclude or rebut such presumption, then such presumption is excluded, and in order that

Digitized by Google

LIBEL—*contd.*

such publication should constitute an actionable wrong, express malice must be proved.

A statement fairly made by a person *bonâ fide*, *i.e.*, with an honest belief in its truth,—whether the statement in itself be true or false,—upon any subject-matter in which such person has an interest, or in reference to which he has a duty, and in discharge of some public or private duty, legal or moral, or in the conduct of his own affairs, in matters where his interests are concerned, is privileged if made to a person having a corresponding interest or duty, and if fairly warranted by any reasonable occasion or exigency, and honestly made, though it contain defamatory matter.

If the statement be true, that is a defence to a suit for damages, independent of any question of privilege. The publication by the defendants of the resolution in question, so far as it consisted of sending a copy of them to Government, came within these principles and was privileged; and that there was no evidence in the case from which the existence, on the Trustees' part, of express malice could be inferred; the burden of proving the existence of such express malice being on the plaintiff.

4th—That the recording of such resolutions by the Trustees, being in obedience to the provisions of their Act, was privileged, as was also the causing them to be copied for record by clerks in the employ of the Trustees (if in itself a publication).

5th—That the sending of the resolution to the plaintiff himself being a privileged communication, the incidental but necessary co-operation of the Secretary in making a draft of the letters forwarding them, and of the office clerks in fair-copying the Secretary's draft letters, was covered by the same privilege.

6th—On the evidence, that the acts and conduct of the plaintiff justified the defendants in passing the resolutions.

7th—That the plaintiff having alleged in his plaint express malice and want of *bonâ fides*, and thereby compelled the defendants to go into the defence of justification, on which they had succeeded, the plaintiff must pay the costs of the suit. SHEPHERD *v.* THE TRUSTEES OF THE PORT OF BOMBAY. *Green*, J..... **I. L. Rep. 1 Bom. 477, 1876.**

2. —— *Qualified Privilege.*] Plaintiffs and defendants were members of two firms, each creditors of an absconded debtor, one Bavachi Kunhi Pakhi. The plaintiffs' firm brought a suit to recover the sum alleged to be due to them by the said Bavachi Kunhi Pakhi; and, pending that suit, the defendants' firm presented a petition to the Court which contained the statements complained of, which were principally to the effect that the plaintiffs had prejudiced the petitioners by suing the said Bavachi Kunhi Pakhi for sums greatly in excess of their just claims against him. The Judge found that there was no malice in fact, but that the statements were untrue and calculated to damage, and he accordingly gave a decree to the plaintiffs with damages.

Held on appeal, reversing the decision of the lower Court, that as the defendants were creditors of an absconded debtor, and deeply interested in seeing that his estate was not swept off in satisfaction of an excessive claim made by the earliest suitor, they in presenting a petition pointing out what they considered suspicious elements in the plaintiff's claim against such debtor, were at all events entitled to the qualified privilege of persons acting in good faith, and making communications with a fair and reasonable purpose of protecting their own interests. HINDE *v.* BAUDRY. *Morgan*, C.J., and *Holloway*, J...**I. L. Rep. 2 Mad. 13, 1876.**

LICENSE FOR SALE OF LIQUORS.

See **Illicit Sale of Liquors.**

EMPRESS *v.* SEYMOUR...**I. L. Rep. 1 All. 630.**

EMPRESS *v* DHARAMDAS.....**Ibid. 635.**

EMPRESS *v.* MAHINDRA LAL...**Ibid. 638.**

LIEN—On Bond.

See **Mortgage. 39.**

HASSOON ARRA *v.* JAWADOONISSA. **I. L. Rep. 4 Cal. 29.**

—— For Costs—Solicitor's.

See **Mortgage. 38.**

BRIJNATH DASS *v.* JUGGERNATH DASS.....**I. L. Rep. 4 Cal. 742.**

—— By Custom on Indigo Factory.

See **Indigo Factories. 1.**

MONOHUR DOSS *v.* MCNAGHTEN... **I. L. Rep. 3 Cal. 231.**

—— Of Manager of West India Estates.

See **Mortgage. 22.**

MORAN *v.* MITTU BIBEE.....**I. L. Rep. 2 Cal. 58.**

Digitized by Google

LIEN—*contd.*

—— Of Mortgagee on Sale of Mortgagor's Interest in Execution of Money Decree obtained by Mortgagor.

See **Mortgage. 5.**

TUKARAM *v.* RAMCHANDRA...**I. L. Rep. 1 Bom. 314.**

See **Sheriff's Sale. 3.**

BHUGGOBUTTY *v.* SHAMACHURN... **I. L. Rep. 1 Cal. 337.**

—— Salvage Lien.

See **Mortgage. 22.**

MORAN *v.* MITTU BIBEE.....**I. L. Rep. 2 Cal. 58.**

—— Solicitor's—for Costs.

See **Mortgage. 38.**

BRIJNATH DASS *v.* JUGGERNATH DASS.....**I. L. Rep. 4 Cal. 742.**

——Vendor's—for Unpaid Purchase Money.

See **Vendor and Purchaser. 1.**

TRIMALRAV *v.* THE MUNICIPAL COMMISSIONERS OF HUBLI... **I. L. Rep. 3 Bom. 172.**

1. ——*Unauthorised Sale by Natural Guardian of Minor—Bombay Minors Act XX. of* 1864 *—Lien—Repayment of Money due on a Mortgage.*] The plaintiff, as purchaser at a Court sale in execution of a decree obtained against the original owner, sued to recover land in the possession of the defendant. The defendant alleged that he had bought the land from the widow of the previous owner, by whom it had been mortgaged, and that he (the defendant) had paid off the mortgage. The previous owner had left a minor son. The lower Courts passed a decree for the plaintiff, on the ground that the sale by the widow was invalid, she not having obtained a certificate of administration to her deceased husband, and having no authority under Act XX. of 1864:—

Held, that though the sale by the widow to the defendant was invalid, yet the defendant had a lien on the land for the amount of the mortgage debt he had paid, and that the plaintiff could not set aside the sale to the defendant without refunding the amount secured by such lien. *Bai Kesar* v. *Bai Ganga* (8 Bom. H. C. Rep. A. C. J. 31) followed. KUVARJI *v.* MOTI HARIDAS. *Melvill* and *Kemball*, JJ...**I. L. Rep. 3 Bom. 234, 1878.**

2. —— *Suit to recover Title Deeds.*] In order that a defendant may set up his right of lien as a defence, he must be prepared to show, that at the commencement of the suit he was prepared to give up the property over which he claimed the lien, on being paid the amount due to him, and therefore he cannot plead his right of lien when he denies and contests the plaintiff's title to the property. JUGGERNATH DOSS *v.* BRIJNATH DOSS. *Garth*, C.J., and *Markby*, J. **I. L. Rep. 4 Cal. 323, 1878.**

LIGHT AND AIR—Obstruction to.

See **Mandatory Injunction. 1.**

JAMNADAS *v.* ATMARAM...**I. L. Rep. 2 Bom. 133.**

Easement—Appropriation.] The plaintiff and defendant, being owners of two adjoining houses with a common party wall between them, the former placed a window frame in an aperture in an upward extension of his part of the wall which he had erected eight years before suit, and the defendant thereupon raised the wall on her side, so as to cut off the supply of light and air which the plaintiff used to receive before and after placing the window frame. *Held*, that there had been no appropriation by the plaintiff of the light and air for the statutory period (20 years) creating in him a right of easement, and entitling him to relief against the inconvenience caused by the defendant's act. SARUBHAI *v* BAPU NARHAR SOHONI. *West* and *Pinhey*, JJ...**I. L. Rep. 2 Bom. 660, 1878.**

LIMITATION—Accounts.

See **Limitation. 34, 64.**

—— Acts of—Construction.

See **Construction of Statute. 3.**

—— Acknowledgment of Debt.

See **Acknowledgment of Debt.**

—— Acknowledgment of Mortgagor's Title.

See **Acknowledgment of Mortgagor's Title.**

See **Construction of Statute. 3.**

UMIASHANKAR *v.* CHHOTALAL...**I. L. Rep 1 Bom. 19.**

—— Acts of Ownership—Title.

See **Limitation. 7.**

—— Added Parties.

See **Assignment of Mortgage.**

GANPAT *v.* ADARJI...**I. L. Rep. 3 Bom. 312.**

See **Onus Probandi. 2.**

ABDUL *v.* MANJI...**I. L. Rep. 1 Bom. 295.**

—— Adjective and Substantive Law.

See **Limitation. 81.**

Digitized by Google

LIMITATION—*contd.*

—— Adverse Possession.

See the Index heading **Adverse Possession.**

—— For Appeal from Acquittal.

See **Appeal—Criminal. 5.**

EMPRESS *v.* JYADULLA...**I. L. Rep. 2 Cal. 436.**

—— For Appeal—Date of Presentation of Original Memorandnm.

See **Appeal—Civil. 14.**

JAGAN NATH *v.* LALMAN...**I. L. Rep. 1 All. 260.**

—— For Appeal—Exclusion of Time necessary to obtain Copy of Decree.

See **Letters Patent (Allahabad) cl. 10.**

FAZAL *v.* PHUL KUAR...**I. L. Rep. 2 All. 192.**

See **Limitation. 90.**

—— For Application for Assessment of Mesne Profits.

See **Civil Procedure Code, Act VIII. of 1859, § 197. 1.**

DILDAR HOSSEIN *v.* MUJEEDUNNISSA.....**I. L. Rep. 4 Cal. 629.**

—— For an Application by an Attorney under Rule 149 of the Common Law Rules of Supreme Court.

See **Attorney and Client. 1.**

ABA ISMAIL *v.* ABA THARA...**I. L. Rep. 1 Bom. 253.**

—— For Application by Representative of Deceased Judgement Creditor to continue Execution Proceedings commenced by him.

See **Limitation. 95.**

—— For Application for Restitution by Person dispossessed of Property.

See **Limitation. 68.**

—— Calculation of Period of—as to Parties Added to Suit.

See **Assignment of Mortgage. 1.**

GANPAT *v.* ADARJI...**I. L. Rep. 3 Bom. 312.**

See **Onus Probandi. 2.**

ABDUL *v.* MANJI...**I. L. Rep. 1 Bom. 295.**

See **Co-Sharers of Land. 4.**

BOYDONATH *v.* GRISH CHUNDER. **I. L. Rep. 3 Cal. 26.**

LIMITATION—*contd.*

—— Computation according to English Calendar.

See **Bengal Act VIII. of 1869, § 29. 1.**

MAHOMED ELAHEE BUKSH *v.* BROJO KISHORE SEN...**I. L. Rep. 4 Cal. 497.**

—— Computation of Period of—Deduction of Time occupied in Unsuccessful Enhancement Suit, in Suit for Arrears of Rent at Admitted Rate, not allowed.

See **Limitation. 9.**

—— Computation of Period of—Deduction of Time occupied in Unsuccessful Suit for *Khas* Possession, in Suit for Arrears of Rent, not allowed.

See **Limitation. 10.**

—— Computation of Period of—Deduction of Time occupied in prosecuting Suits in Courts without Jurisdiction—Suits under Act XVIII. of 1873.

See **Limitation. 39.**

—— Computation of Period of—Deduction of Time occupied by Proceedings in Wrong Court.

See **Limitation. 41.**

—— Computation of Period of—Deduction of Time occupied by Former Suit.

See **Limitation. 91.**

—— Computation of Period of—for Execution of Decree—Exclusion of Date of Previous Application for Execution.

See **Limitation. 82.**

—— Computation of Period of—for Execution of Decree—Exclusion of Time occupied in seeking Execution in Court without Jurisdiction.

See **Limitation. 40.**

—— Computation of Period of—for Petition for Leave to appeal to Privy Council—Exclusion of Time necessary to obtain Copy of Judgment.

See **Limitation. 90.**

See **Letters Patent (Allahabad), Cl. 10. 2.**

FAZAL MAHOMED *v.* PHUL KUAR... **I. L. Rep. 2 All. 192.**

—— Computation of Period of—to Suit commenced *in Formâ Pauperis* but continued in Ordinary Form.

See **Limitation. 37.**

Digitized by Google

LIMITATION—*contd.*

See **Petition for Leave to Sue in Forma Pauperis. 1. 2.**
SKINNER *v.* ORDE...**I. L. Rep. 1 All. 230; L. Rep. 6 I. A. 126.**

—— Confiscation by Government of Houses in Lucknow—Abandonment of Confiscation—Ejectment Suit—Defendant in Possession before Confiscation.
See **Confiscation in Oudh. 2.**
PRINCE MIRZA JEHAN *v.* NAWAB ASSUT BAHU...**L. Rep. 6 I. A. 76; I. L. Rep. 4 Cal. 727.**

—— Custom cannot override—Act.
See **Easement. 2.**
See **Custom. 3.**
MOHANLAL *v.* AMRATLAL.....**I. L. Rep. 3 Bom. 174.**

—— Deduction of Time occupied by Proceedings in Wrong Court.
See **Limitation. 41.**

—— Deduction of Time occupied in Prosecuting Suits under Act XVIII. of 1873 in Court without Jurisdiction.
See **Limitation. 39.**

—— Deduction of Time occupied by Former Suit.
See **Limitation. 91.**

—— Deduction of Time occupied in Unsuccessful Enhancement Suit, in Suit for Arrears of Rent at admitted Rate, not allowed.
See **Limitation. 9.**

—— Deduction of Time occupied in Unsuccessful Suit for *Khas* Possession, in Suit for Arrears of Rent, not allowed.
See **Limitation. 10.**

—— Dower — Unsuccessful Application for Leave to sue *in Formâ Pauperis.*
See **Mahomedan Law—Dower. 1.**
RANEE KHAJOOROONISSA *v.* RANEE RYEESOONISSA.....**L. Rep. 2 I. A. 235.**

—— Easement—Acquisition of Right to—by 20 Years' User—Abandonment—Discontinuance.
See **Easement. 1.**
SHAM CHURN *v.* TARINEY CHURN. **I. L. Rep. 1 Cal. 422.**

LIMITATION—*contd.*

—— Easement—Projecting Eaves—Acquisition of Right to—by 30 Years' User.
See **Easement. 2.**
MOHANLAL *v.* AMRATLAL...**I. L. Rep. 3 Bom. 174.**

—— Easement—Riparian Owners—Right to have Drainage Water flow in Usual Course.
See **Easement. 3.**
SUBBRAMANIYA *v.* RAMACHANDRA. **I. L. Rep. 1 Mad. 335.**

—— For Execution of Decree—Acknowledgment of Time-barred Decree by Judgment-Debtor.
See **Limitation. 42. 43. 44.**

—— For Execution of Decree—Application under § 285 of Act VIII. of 1859.
See **Limitation. 77.**

—— For Execution of Decree—Application to Enforce or Keep in Force Decrees or Orders.
See **Limitation. 69 to 89.**

—— For Execution of Decree—Application (Informal) to enforce or keep in force the Decree.
See **Limitation. 80.**

—— For Execution of Decree—Application for Possession by Purchaser at Execution Sale—Certificate of Sale.
See **Limitation. 96.**

—— For Execution of Decree—"Applying to enforce a Decree"—Application *simpliciter* "to keep the Decree in force."
See **Limitation. 83. 85. 88.**

—— For Execution of Decree—Application for Transfer of Decree for Execution.
See **Execution of Decree. 18.**
COLLINS *v.* MOWLA BAKSH...**I. L. Rep. 2 All. 284.**

—— For Execution of Decree for Arrears of Rent.
See **Beng. Act VIII. of 1869, § 58.**
GOLOKEMONEY *v.* MOHESH CHUNDER.....**I. L. Rep. 3 Cal. 547.**

—— For Execution of Decree Barred by Act XIV. of 1859—Application for Execution made after Act IX. of 1871 came into force.
See **Limitation. 89.**

Digitized by Google

LIMITATION—*contd.*

—— For Execution of Decree—Compromise of Decree—Instalments paid under Subsequent Application for Execution more than three Years after Decree.
See **Limitation. 5.**

—— For Execution of Decree—"Date of Applying."
See **Limitation. 78.**

—— For Execution of Decree—Decree in Favour of Firm in Name of Agent—Application for Execution by Agent succeeding Agent named in Decree.
See **Execution of Decree. 13.**
LACHMAN BIBI *v.* PATNI RAM...**I. L. Rep. 1 All. 510.**

—— For Execution of Decree—Deposit of Property in lieu of Security, on Stay of Execution—Application to recover such Property.
See **Execution of Decree. 4.**
SHEO GHOLAM SAHAH *v.* RAHUT HUSSAIN... **I. L. Rep. 4 Cal. 6.**

—— For Execution of Decree — Exclusion of Day of last preceding Application.
See **Limitation. 82.**

—— For Execution of Decree—Exclusion of Time occupied in Unsuccessful Attempts to obtain Execution in Court without Jurisdiction.
See **Limitation. 40.**

—— For Execution of Decree—Execution Proceedings Struck off File—Subsequent Application, more than Three Years after previous one, in substance to continue previous Proceedings.
See **Limitation. 73. 74. 80. 86.**

—— For Execution of Decree—*Ex-parte* Decree—Appeal from Order refusing to set aside.
See **Limitation. 87.**

—— For Execution of *Ex-parte* Decree.
See **Limitation. 67.**

—— For Execution of Final Decree of Appellate Court.
See **Limitation. 76.**

—— For Execution of Decree in Force at the Time of Passing of Act XIV. of 1859.
See **Limitation. 36.**

—— For Execution of Decree in Force when Act IX. of 1871 came into operation—Proceedings sufficient to bar Limitation *under Act XIV. of* 1859, pending till 30th September 1871—informal Application on 30th September 1871, more than Three Years after last preceding Application.
See **Limitation. 70.**

—— For Execution of Decree in Force before Act IX. of 1871 came into operation.
See **Limitation. 81. 84.**

—— For Execution of Decree—Interruption of Proceedings by Intervenor—Suit.
See **Limitation. 74.**

—— For Execution of Decree—Joint Decree—Application for Partial Execution.
See **Limitation. 75.**

—— For Execution of Decree or Order of High Court on Special Appeal.
See **Limitation. 69. 76.**

—— For Execution of Decree for Partition.
See **Decree for Partition.**
SHEIKH KHOORSHED HOSSEIN *v.* NUBEE FATIMA... **I. L. Rep. 3 Cal. 551.**

—— For Execution of Decree Payable by Instalments.
See **Limitation. 71. 71a. 72.**

—— For Execution of Decree—Power of Court on Presentation of Application for—to consider whether Execution barred at Date of Previous Application, notwithstanding Notices issued.
See **Limitation. 84.**

—— For Execution of Decree on Specially Registered Bond.
See **Appeal—Civil. 12.**
WILAYAT-UN-NISSA *v.* NAJIB-UN-NISSA..... **I. L. Rep. 1 All. 583.**
See **Limitation. 79.**

—— Expiration of Period of — on Close Holiday—Presentation of Plaint next Court Day.
See **Limitation. 6. 13.**

—— Payment of Interest as such.
See **Limitation. 45. 46. 47.**

—— For Petition for Leave to appeal to the Privy Council—Exclusion of Time required to obtain Copy of Judgment.
See **Limitation. 90.**

—— Plea of—first raised after Remand on Special Appeal.
See **Limitation. 3.**

Digitized by Google

LIMITATION—*contd.*

—— To Right to Resume Grant in lieu of Maintenance.
See **Limitation. 8.**

—— To Right to Resume or Assess Rent-free Land.
See **Resumption. 2.**
KEVAL *v.* TALOOKDAREE SETTLEMENT OFFICER...**I. L. Rep. 1 Bom. 586.**

—— To Suit for an Account of Profits obtained by Infringement of Patent.
See **Limitation. 50.**

—— To Suit for Arrears of Maintenance.
See **Hindu Law—Maintenance of Widow. 4.**
JIVI *v.* RAMJI...**I. L. Rep. 3 Bom. 207.**

—— To Suit for Arrears of Maintenance under Will.
See **Limitation. 32.**

—— To Suit for Arrears of Rent—Deduction of Time occupied in Unsuccessful Enhancement Suit not allowed.
See **Limitation. 9.**

—— To Suit for Arrears of Rent—Deduction of Time occupied in unsuccessful Suit for *Khas* Possession not allowed.
See **Limitation. 10.**

—— To Suit for Arrears of Rent—Expiration of Period of Limitation on Close Holiday—Presentation of Plaint next Court Day too late.
See **Limitation. 6. 13.**

—— To Suit for Arrears of Rent—Payment into Court.
See **Bengal Act VIII. of 1869, § 31.**
RAM SUNKAR *v.* BIV CHUNDER...**I. L. Rep. 4. Cal. 714.**

—— To Suit to Avoid an Under-Tenure.
See **Sale of Under-Tenure. 2.**
UNNODA *v.* MOTHURA.....**I. L. Rep. 4 Cal. 860.**

—— To Suit on Bond Barred by Act XIV. of 1859—Revival of Right to sue—Payment of Interest.
See **Limitation. 45. 46.**

—— To Suit on Bond Payable by Instalments.
See **Limitation. 24. 30.**

LIMITATION—*contd.*

—— To Suit Brought after Act IX. of 1871 came into force on Cause of Action Barred by Act XIV. of 1859.
See **Limitation. 15. 16. 17.**
See **Hindu Law—Maintenance of Widow. 6.**
KRISHNA MOHUN *v.* OKHILMONEE. **I. L. Rep. 3 Cal. 831.**

—— To Suit Brought after Act IX. of 1871 came into force on Cause of Action Not Barred by Act XIV. of 1859.
See **Limitation 1.**

—— To Suit to Cancel Under-Tenure.
See **Sale of Under-Tenure. 2.**
UNNODA CHURN *v.* MOTHURA NATH.....**I. L. Rep. 4 Cal. 860.**

—— To Suit on Cause of Action Barred by Act XIV. of 1859—Revival of Right to Sue—Payment of Interest.
See **Limitation. 45. 46. 47.**

—— To Suit for Contribution.
See **Limitation. 60.**

—— To Suit by Co-Sharer of Mahal for Share of Profits.
See **Act XVIII. of 1873, § 94. 1.**
BHIKHAN KHAN *v.* RATAN KUAR.. **I. L. Rep. 1 All. 512.**

—— To Suit for Costs.
See **Limitation. 57.**

—— To Suit for Damages for Breach of Covenant.
See **Registration. 28.**
RAJU *v.* KRISHNARAV...**I. L. Rep. 2 Bom. 273.**

—— To Suit for Declaratory Decree only.
See **Limitation. 2.**

—— To Suit to have a Deed Declared a Forgery.
See **Limitation. 58.**

—— To Suit for Dharmakartaship of Pagoda.
See **Limitation. 64.**

—— To Suit to Enforce a Right to Pre-emption.
See **Limitation. 29. 49. 92.**
See **Pre-emption. 6.**
JOGESHAR SINGH *v.* JAWAHIR SINGH.....**I. L. Rep. 1 All. 311.**
See **Pre-emption. 5.**
RAJA RAM *v.* BANSI...**I. L. Rep. 1 All. 207.**

Digitized by Google

—— To Suit to "Establish his Right" by Person against whom Order under § 246 of Act VIII. of 1859 is passed.

See **Civil Procedure Code, Act VIII. of 1859, § 246. 1. 2. 3.**

JEONI *v.* BHAGWÀN SAHAI...**I. L. Rep. 1 All. 541.**

BADRI PRASHAD *v.* MUHAMUD YUSUF ..... **Ibid. 381.**

IMBICHI KOYA *v.* KAKUNNAT UPAKI... . **I. L. Rep. 1 Mad. 391.**

—— To Suit to Establish a Right to Share in a Patilki Watan and officiate in Rotation.

See **Declaratory Decree. 19.**

NINDANGAVDA *v.* MALANGAVDA. **I. L. Rep. 1 Bom. 533, n.**

—— To Suit to Establish a Right to Exclusive Worship of Idol—Act IX. of 1871, Sched. II., Art. 118.

See **Right to Worship of Idol.**

EHSAN CHUNDER *v.* MONMOHINI DASSI..... **I. L. Rep. 4 Cal. 683.**

—— To Suit to Establish a Right to Turn of Worship of Idol.

See **Right to Worship of Idol.**

EHSAN CHUNDER *v.* MONMOHINI DASSI..... **I. L. Rep. 4 Cal. 683.**

—— To Suit to Establish Title to Property ordered to be sold in Execution.

See **Limitation. 52.**

—— To Suit for Foreclosure.

See **Assignment of Mortgage.**

GANPAT *v.* ADARJI...**I. L. Rep. 3 Bom. 312.**

—— To Suit for Foreclosure.

See **Limitation. 17.**

—— To Suit for "Haqq-i-Chaharam" based on Custom.

See **Limitation. 94.**

—— To Suit by Hindu Excluded from Joint Family Property.

See **Limitation. 65.**

—— To Suit by Holder of Decree for Money, sold in Execution of a Decree against him, subsequently reversed, against Auction Purchaser for Money recovered under the Decree.

See **Limitation. 25.**

—— To Suit for Illegal Ejectment of Occupancy Ryot.

See **Bengal Act VIII. of 1869, § 27. 1.**

GOLABOLEE *v.* KOOTOSBOLLA SIRCAR.....**I. L. Rep. 4 Cal. 527.**

—— To Suit on Instalment Bond.

See **Limitation. 30.**

—— To Suit on Judgment.

See **Limitation. 62.**

—— To Suit for Land belonging to Service Watan alienated by Incumbent.

See **Service Watan. 1.**

BABAJI *v.* NANA.....**I. L. Rep. 1 Bom. 535. 536.**

—— To Suit for Maintenance.

See **Limitation. 32. 33.**

See **Hindu Law—Maintenance of Widow. 6.**

KRISHNA MOHUN *v.* OKHILMONI. **I. L. Rep 3 Cal. 331.**

—— To Suit for Maintenance and Arrears under a Will creating no Charge on the Inheritance of the Testator's Estate.

See **Limitation. 32.**

—— To Suit for Mesne Profits misappropriated.

See **Mesne Profits. 5.**

SHURNOMOYEE *v.* PATTARRI SIRCAR...**I. L. Rep. 4 Cal. 625.**

—— To Suit for Money belonging to Plaintiff obtained by Fraud and Collusion.

See **Limitation. 55.**

—— To Suit for Money due on Bond hypothecating Immoveable Property.

See **Interest. 3.**

BALDEO PANDAY *v.* GOKAL RAI ... **I. L. Rep. 1 All. 603.**

—— To Suit to enforce Mortgage Bond by Sale of Mortgaged Premises.

See **Limitation. 31.**

Digitized by Google

LIMITATION—*contd.*

—— Suit against Municipality—Substitution of President for Secretary as Defendant.

See **Act XV. of 1873, § 43.**

MANNI KASAUNDHAN *v* CROOKE...
I. L. Rep. 2 All. 296.

—— To Suit on Oral Agreement for Payment of Debt by Instalments.

See **Limitation. 93.**

—— To Suit for Partition.

See **Prescription. 1.**

SITARAM *v.* KHANDERAO ...**I. L. Rep. 1. Bom. 286.**

—— To Suit for Partition—Manager holding Bulk of Estate—*Sir* Land held by other Members.

See **Hindu Law—Partition. 9.**

RUNJEET SINGH *v.* KOOER GUJRAJ SINGH...**L. Rep. 1 I. A. 9.**

—— To Suit for Possession—Fraud.

See **Limitation. 59.**

—— To Suit for Possession with Mesne Profits by establishing Plaintiff's *Hawla* Right.

See **Bengal Act VIII. of 1869, § 27. 2.**

KHAJAH ASHANOOLLAH *v.* RAMDHONE BHUTTACHARJEE ...**I. L. Rep. 1 Cal. 325.**

—— To Suit on Promissory Note payable on Demand.

See **Limitation. 1. 15. 23. 56.**

—— To Suit on Promissory Note payable on Demand, brought after 1st April 1873.

See **Limitation. 15.**

—— To Suit on Promissory Note payable on Demand to which Act XIV. of 1859 applicable.

See **Limitation. 15.**

—— To Suit on Promissory Note payable on Demand, executed before Act IX. of 1871 came into force—Demand made before, and Suit instituted after, Act XV of 1877 came into force.

See **Limitation. 28.**

—— To Suit on Promissory Note payable on Demand, executed after Act IX. of 1871 came into force.

See **Limitation. 11.**

LIMITATION—*contd.*

—— To Suit on Promissory Note payable by Instalments, whole to fall due on any Default.

See **Limitation. 30.**

—— To Suit by Purchaser at Sale for Arrears of Revenue to recover Possession.

See **Limitation. 14.**

—— To Suit for Property Attached under Act XXV. of 1861, Chap. XXII., § 319.

See **Limitation. 53.**

—— To Suit for Property Confiscated for Rebellion.

See **Act IX. of 1850, § 20.**

MOHUMMUD BUHADOORKHAN *v.* THE COLLECTOR OF BAREILLY.
L. Rep. 1 I. A. 167.

—— To Suit for Property Sold in Execution of Decree purchased by Joint Debtor.

See **Limitation. 50.**

—— To Suit for Possession of Land Purchased at Execution Sale—Formal Possession.

See **Limitation. 12. 22.**

—— To Suit for Execution Sale Proceeds from Defendant, and for Declaration of Nullity of Order under which Defendant obtained Sale Proceeds.

See **Limitation. 54.**

—— To Suit to Redeem—Acknowledgment of Mortgagor's Title made before Act XIV of 1859.

See **Acknowledgment of Mortgagor's Title. 2.**

DAIA CHAND *v.* SARFARAZ ALI...
I. L. Rep. 1 All. 425.

—— To Suit to Redeem—Acknowledgment of Mortgagor's Title signed by Agent of Mortgagee.

See **Acknowledgment of Mortgagor's Title. 3.**

RAHUMANI BIBI *v.* HULASA KUAR.
I. L. Rep. 1 All. 642.

—— To Suit to Redeem—Acknowledgment of Mortgagor's Title—Signature by Mortgagees as such, of Record of Rights and *Khatauni Shava Asamiwar.*

See **Acknowledgment of Mortgagor's Title. 1.**

DAIA CHAND *v.* SARFARAZ...**I. L. Rep. 1 All. 117.**

Digitized by Google

LIMITATION—*contd.*

—— To Suit to Redeem—Adverse Possession.

See **Mortgage. 37.**

ALI MUHAMMAD *v.* LALTA BAKSH. **I. L. Rep. 1 All. 655.**

—— To Suit to Redeem a Mortgage in Oudh.

See **Act I. of 1869. 1.**

RAJAH KISHEN DUTT *v.* NARENDAR BAHADOOR SINGH...**L. Rep. 3 I. A. 85.**

—— To Suit for Rent.

See **Limitation. 4,** and **Res Judicata. 18.**

—— By Representative of Absconding Shareholder in Village to recover Share from Purchaser from Co-Sharer—Trust.

See **Limitation. 27.**

—— To Suit by Returned Convict, under a Pardon, to establish his Right to Share of Family Property.

See **Limitation. 26.**

—— To Suit by Reversioner for Declaration of Invalidity of Alienation by Hindu Widow.

See **Limitation. 2.**

—— To Suit to Resume Grant in lieu of Maintenance.

See **Limitation. 8.**

—— To Suit to Set Aside an Adoption.

See **Limitation. 97.**

—— To Suit to Set Aside an Adoption and recover Immoveable Property.

See **Limitation. 66.**

—— To Suit to Set Aside Sale for Arrears of Revenue fraudulently contrived by Co-Sharer.

See **Sale of Arrears of Revenue. 2.**

BHOOBUN CHUNDER *v.* RAM SOONDER...**I. L. Rep. 3 Cal. 300.**

—— To Suit to Set Aside a Sale in Execution of Decree.

See **Limitation. 51.**

—— Suit for Share of Family Property—Participation in Profits to Full Extent of Share—Possession of Specific Share.

See **Hindu Law—Undivided Family. 3.**

LUCHMUN SINGH *v.* SHUMSHERE SINGH...**L. Rep. 2 I. A. 58.**

LIMITATION—*contd.*

—— Trust, Constructive.

See **Limitation. 26. 27.**

—— Trust Express.

See **Limitation. 27. 38. 38a. 61.**

See **Hindu Law—Will. 10.**

MANIKLAL *v.* MANCHARSHA...**I. L. Rep. 1 Bom. 269.**

1. —— *To Suit brought after Act IX. of* 1871 *came into force on Cause of Action not barred by Act XIV. of* 1859.] It was the intention of the Legislature that Act IX. of 1871 should apply to suits brought after it came into force upon causes of action which existed before that day (1st April 1873), and on which causes of action the periods of limitation prescribed by Act XIV. of 1859 had not run their full course before that day.

A suit, therefore, brought on 25th January 1876 on a promissory note payable on demand executed on the 31st July 1870, will be sustainable if there has not been a demand made more than three years before the filing of the plaint. RAMCHANDRA *v.* SOMAR. *Westropp*, C.J., and *N. Harridas*, J.....**I. L. Rep. 1 Bom. 305, n., 1877.**

See ABDUL KARIM *v.* MANJI HANSRAJ... **Ibid. 295.**

Under **Onus Probandi,** and **11** and **16,** *infra.*

2. —— *To Suit to obtain a Declaratory Decree—Act XIV. of* 1859, § 1, *Cl.* 16.] *Per Melvill*, J :—As no other limitation is expressly provided by Act XIV. of 1859, a suit to obtain a declaratory decree, and nothing more, falls within the provisions of § 1, Cl. 16, of that Act.

Per N. Harridas, J. :—That clause does not apply to a suit in which a declaration is sought of a right in immoveable property, but Cl. 12 does.

"I only know of one case, *Bhikaji* v. *Jaganath* (10 Bom. H. C. Rep. 351), in which it would appear to have been laid down that a suit by a reversioner, during a widow's lifetime, to obtain a declaration that a conveyance made by her is void, must be brought within six years from the date of the conveyance—Act XIV. of 1859, § 1, Cl. 16. The Calcutta cases do not appear to have been cited or considered by the learned Judges in that case, and if the point arose before me, I should probably be disposed

Digitized by Google

LIMITATION—*contd.*

to take a different view of the law." *Per N Harridas*, J. MORU PATLAJI *v.* GOPAL SATU...**I. L. Rep. 2 Bom. 120.**

3. —— *Remand — Special Appeal—Plea of Limitation first raised on.*] A defence of limitation under Act XIV. of 1859 cannot be raised for the first time after there has been a remand on special appeal, and on a special appeal from the decree of the Court which heard the cause on remand.

Per Westropp, C. J.:—Speaking for myself alone, I reserve the right to consider whether, even upon a special appeal, in a case where there has been no remand, I should follow *Saluji* v. *Rajsangji* (2 Bom. H. C. Rep. A. C. J. 162) and *Davlata* v. *Beru* (4 Bom. H. C. Rep. A. C. J., 197). MORU PATLAJI *v.* GOPAL SATU. *Westropp*, C. J., *West* and *Pinhey*. JJ...**I. L. Rep. 2 Bom. 120, 1877.**

4.—— *Suit for Rent.*] A landlord, by merely denying the tenancy, and bringing a suit to recover possession, in which he is ultimately unsuccessful, does not thereby put an end to the tenancy so long as the litigation is going on, or prevent limitation from running so as to bar a suit for rent brought by him on the failure of his suit for possession. WATSON & Co. *v.* DHONENDRA CHUNDER MOOKERJEE. *Markby* and *Mitter*, JJ.....**I. L. Rep. 3 Cal. 6, 1877.**

S. C. under **Res Judicata. 18.**

5. —— *Execution of Decree—Compromise of Decree—Receipt of Instalments.*] The receipt of instalments by a decree-holder out of Court in pursuance of a compromise made between him and the judgment-debtor is not a proceeding to enforce or keep in force a decree, and a condition in the compromise that on default being made in a certain number of instalments, the decree should be executed in full, does not prevent limitation from running, even though such compromise should be recognized by the Court executing the decree. A decree-holder entered into a compromise with the judgment debtor, agreeing to accept payment by instalments, which compromise was notified to the Court executing the decree by a petition from the judgment debtor acknowledging the decree-holder's right to revert to execution of the oirginal decree in the event of failure to pay any two consecutive monthly instalments, and the composition was ratified by the Court, the case being struck off the execution file on the 7th September 1869.

LIMITATION—*contd.*

On the 15th of February 1873, the decree-holder applied for a certificate under § 258 of Act VIII. of 1859, to enable him to execute the decree out of the jurisdiction of the Court. The certificate issued on the 25th of April 1873, but no further proceedings were had under it, as the judgment-debtor resumed payment of instalments. On the 15th of January 1876, the decree holder again applied for execution of the decree :-

Held, that execution was barred by limitation at the time when the application of the 15th February 1873 was made, and the fact that there were proceedings in 1873 which would make the application of 1876 within time, was of no use to the decree-holder. STOWELL *v.* BILLINGS. *Stuart*, C.J., and *Spankie*, J...**I. L. Rep. 1 All. 360, 1877.**

6. —— *Presentation of Plaint—Vacation—Act IX. of* 1871, § 5 *Cl.* a] Where the period of limitation prescribed for a suit expired when the Court was closed for a vacation, and the Court, instead of opening on the day that it should have re-opened after the vacation, re-opened on a later day, on which day the suit was instituted, and it appearing that the plaintiff brought his plaint to the Munsiff of the Court on the day on which it ought to have been re-opened in order to present it :—

Held, that the suit was instituted in time. BISHAN CHAND *v.* AHMED KHAN. *Spankie* and *Oldfield*, JJ.... ..**I. L. Rep. 1 All. 263, 1876.**

See **13**, *infra.*

7. ——*Title—Possession—Acts of Ownership —Evidence.*] In some cases, as for instance, where grants or leases have been made of waste or jungle lands, and the right to those lands is disputed, it is often impossible to give evidence of acts of ownership or possession over the property, because it is uninhabited and uncultivated, and no acts of ownership by any one have been exercised over it. In such cases it is often necessary, for the purpose of deciding the question of limitation, to rely on very slight evidence of possession, and sometimes possession of the adjoining land, coupled with evidence of title, such as grants or leases, and the Courts are justified in presuming, under such circumstances, that the party who has the title has also the possession.

But where the land appears to have been occupied, it is generally proper to deal with the question of possession, for purposes of limitation, as distinct from the question of title, for while

Digitized by Google

LIMITATION—*contd.*

the title may be in one person, a twelve years' adverse possession by another person may have barred that title. MOHIMA CHUNDER DEY SIRCAR *v.* HURRO LALL SIRCAR...*Garth*, C.J., and *McDonnell*, J...**I. L. Rep. 3 Cal. 768 ; 2 Cal. Rep. 364, 1878.**

8. —— *Grant in lieu of Maintenance—Right to resume.*] In a suit brought to recover *khas* possession of certain lands held under a grant in lieu of maintenance, the defendants pleaded that a permanent *mokurrari* settlement of the lands had been granted to their ancestors previous to the year 1802, and that the plaintiff's claim was barred by limitation. It appeared that more than twelve years before the institution of the present suit, the then talookdar had sued the present defendants for enhancement of rent, but that the defendants in that suit claimed and established a right to hold the lands in question as a mokurrari holding at a fixed rate ; and that the then plaintiff, having thus failed to obtain an enhancement of rent from the defendants, had sued the then Raja-Zemindar (through whom the present plaintiff claimed) for reduction of the talook rent paid by him, on the ground that the defendants having set up and proved their right to hold the lands at a mokurrari rent, his (the Raja's) assurances in respect of the gross rental of the talook had proved unfounded to that extent, and that he, the talookdar, was entitled to a corresponding reduction of the talook rent paid by him ; and that the talookdar had succeeded in that suit :—

Held, that the setting up by the defendants of the mokurrari in the former suit, was not merely a setting up of the mokurrari, but it was set up in such a manner as affected the Raja-Zemindar with a loss *pro tanto* of his rent in consequence of this mokurrari ; and was such an allegation as put upon the Raja the necessity of attaching the lands within twelve years. Though grants for maintenance by the Raja for the time being, may be liable to revocation at the instance, and at the discretion of succeeding Rajas, yet even if the right of resumption exists in such cases at the option of each Raja at the time of his accession, still, if he has notice of a claim to hold such mokurrari, and allows twelve years to go by without taking steps to get rid of it, he at least is barred for the time of his enjoyment. The present suit, therefore, was barred by limitation. PETAMBER BABOO *v.*

LIMITATION—*contd.*

NILMONY SINGH. *Jackson* and *Tottenham*, JJ...**I. L. Rep. 3 Cal. 793, 1878.**

9. —— *Suit for Arrears of Rent—Deduction of Time occupied in Enhancement Suit—Beng. Act VIII. of* 1869, § 29.] The plaintiff on the 19th of January 1876 sued for arrears of rent due for the year 1869-70, and alleged that in the year 1868-69 the plaintiff had issued a notice enhancing the rent of the defendant, and that a suit for the recovery of the enhanced rent for the year 1869-70 was brought against the defendant in 1870, and finally decided against the plaintiff in 1873. The present suit was for the arrears of rent for the year 1869-70, at the old admitted rate, and the plaintiff contended that such rent did not become due until the dismissal of his enhancement suit :—

Held, that notwithstanding the notice of enhancement, the plaintiff could have sued the present defendant in 1870, for the rent claimed in the suit, which became due in the year 1870, and the present suit, not having been brought within three years from the last day of that year, was barred by § 29 of Beng. Act VIII. of 1869; the plaintiff not being entitled to deduct the time occupied by his enhancement suit from the time which had elapsed since the rent became due, in order to bring the present suit within the period of limitation prescribed by that section. BROJENDRO COOMAR ROY *v.* RAKHAL CHUNDER ROY. *Mitter* and *Maclean*, JJ.....**I. L. Rep. 3 Cal. 791, 1878.**

10. —— *Suit for Arrears of Rent—Beng. Act VIII. of* 1869, § 29.] In a suit brought in 1876 for arrears of rent of certain lands for the years 1866-72, it appeared that the lands in question originally belonged to the defendants' ancestors, but that on their default in payment of the Government revenue, the lands had been sold and purchased by the Government, from whom the defendants leased the property under a lease which expired in 1866. In 1861 the Government sold its rights in the lands to the plaintiff's father, and in 1866, on the expiration of the defendants' lease, the plaintiff endeavoured to obtain possession of the land, but was opposed by the defendants, who set up certain *chukdari* tenures. The plaintiff then, in 1874, brought a suit against the defendants to recover *khas* possession, and the defendants set up in that suit the chukdari tenures. On appeal, the High Court found that the defendants were entitled to

Digitized by Google

LIMITATION—*contd.*

the rights claimed by them, and that the plaintiff's suit was barred by limitation. The plaintiff then, in 1876, brought the present suit to recover the arrears of the chukdari tenures from 1866 to 1872:—

Held, that the last rent thus claimed having accrued due in 1872, the suit was barred by § 29 of Beng. Act VIII. of 1869.

The plaintiff ought to have known, when the defendants' lease came to an end in 1866, what his true position was as against the defendants. They set up against him the chukdari tenures; and if the plaintiff had made proper inquiries, he might have ascertained whether those tenures really existed. But he chose to ignore them, and to sue the defendants improperly (as it had turned out) for khas possession, and it was not because he had made a mistake, and by that mistake put the defendants to the cost and inconvenience of a long litigation, that he had now a right to claim immunity from the provisions of the Limitation Act. HURRO PROSHAD ROY *v.* GOPAUL DASS DUTT. *Garth*, C. J., and *McDonnell*, J...**I. L. Rep. 3 Cal. 817 ; 2 Cal. Rep. 450, 1878.**

11. —— *Promissory Note payable on Demand—Act IX. of* 1871, §§ 2, 3, 4, *and Sched. II.*] In a suit filed on the 17th of November 1875 on a promissory note payable on demand made on the 20th of November 1871:—

Held, that the suit not having been brought until after the date on which § 4 and Sched. II. of Act IX. of 1871 came into force, the question whether or not the suit was barred by limitation must be determined by Schedule II. of that Act, which gives three years *from the date of demand*; and that the suit, therefore, was not barred, there not having been any demand made before suit. MADHAVAN *v.* ACHUDA. *Innes*, C. J. (Offg.) and *Kindersley*, J...**I. L. Rep. 1 Mad. 301, 1877.**

12. —— *Sale in Execution of Decree—Formal Possession.*] *A.* purchased the right, title, and interest of *B.*, a judgment-debtor, in certain lands at an auction sale in execution of a decree in October 1863, was put into *formal* possession in January 1865, and died without ever having obtained *actual* possession. After his death, a suit was filed in September 1875, on behalf of his minor son *C.*, against the defendants, who obstructed his taking actual possession. *Held*, that if *B.* was in possession at the time of the sale, or within twelve years prior to the date of the suit, *C.* was not barred by limitation. KOONJO MOHUN DASS *v.* NOBO COOMAR SHAHA. *Mitter* and *Maclean*, JJ.....**I. L. Rep. 4 Cal. 216, 1878.**

13. —— *Suit for Arrears of Rent—Bengal Act VIII. of* 1869, § 29—*Close Holiday.*] A rent suit under Bengal Act VIII. of 1869 must be brought strictly within the term of three years prescribed by § 29 of that Act, which contains the only law of limitation applicable to the case. Where, therefore, the last day of the term so fixed was a close holiday, and the plaint in such a case was filed on the following day:—*Held*, that as § 29 contains no provision for relaxing the term fixed by it, such as is contained in Act IX. of 1871, the suit was barred. PURRAN CHUNDER GHOSE *v.* MUTTY LALL GHOSE JAHIRA. *Markby* and *Prinsep*, JJ...**I. L. Rep. 4 Cal. 50 ; 2 Cal. Rep. 542, 1878.**

See **6**, *supra*.

Dissented from in KHOSHELAL MAHTON *v.* GUNNESH DUTT...**I. L. Rep. 7 Cal. 690.**

See **Vol. 2, Col. 869.**

14. —— *To Suit by Purchaser at Sale for Arrears of Government Revenue, to recover Possession.*] In suits instituted by a purchaser to recover possession of an estate sold for arrears of Government revenue due on such estate, the purchaser's cause of action (by whatever period of limitation it would be restricted) arises from the time of his purchase, and the period of limitation is to be counted from that time. NARRAIN CHANDER *v.* TAYLER. *Jackson* and *Tottenham*, JJ...**I. L. Rep. 4 Cal. 103 ; 3 Cal. Rep. 151, 1878.**

15. —— *Suit on Promissory Note payable on Demand—Suit barred by Act XIV. of* 1859—*Act IX. of* 1871, *Sched. II., Art.* 72.] The defendant gave the plaintiff a promissory note on the 5th of August 1869, payable on demand with interest at 5 per cent. per annum. Nothing was paid on account of principal or interest, and payment was first demanded in November 1875. In a suit brought on the note after the demand:—*Held*, that the cause of action accrued on, and limitation began to run from, the date of the note, and as the suit, therefore, would have been barred by Act XIV. of 1859 if brought before the 1st of April 1873, the subsequent

Digitized by Google

LIMITATION—*contd.*

repeal of that Act did not revive the plaintiff's right to sue. NOCOOR CHUNDER BOSE *v.* KALLY COOMAR GHOSE. *Pontifex*, J...I. L. Rep. 1 Cal. 328, 1876.

Overruled by MOHESH LAL *v.* BUSUNT KUMAREE...I. L. Rep. 6 Cal. 340 ; 7 Cal. Rep. 121.

See Vol. 2, Col. 813.

16. —— *Suit barred by Act XIV. of* 1859—*Suit instituted after Act IX. of* 1871 *came into force.*] The question whether a suit for moveable or immoveable property which had become barred under any of the provisions of Act XIV. of 1859, before Act IX. of 1871 came into force, could, by reason of the alteration of the periods of limitation in the latter enactment, be now sustained, was said by *Westropp*, C.J., in

ABDUL KARIM *v.* MANJI HANSRAJ. I. L. Rep. 1 Bom. 295, p. 305,

to be a point which the Court had not up to that time had to decide, and on which the Court did not in that case give any opinion. But in

RAMCHANDRA *v.* SOMAR...I. L. Rep. 1 Bom. 305, n.,

Melvill, J., in giving judgment, says:—"The learned Judge" (of the Small Cause Court) "has referred to 7 Mad. H. C. Rep., pp. 283, 288, and 298; but those three cases are not in point, as in all of them the right of suit had been barred by Act XIV. of 1859 before the 1st of April 1873, when Act IX. of 1871 came into force. The defendants in those cases had become entitled, under Act XIV. of 1859, to regard the claims sued upon as barred, and if the Court had held that Act IX. of 1871 had conferred on the plaintiffs a fresh starting point, it would have given such a retrospective construction to Act IX. of 1871 as would have deprived the defendants of the right to treat the claims as barred—which construction, in the absence of express words or clear implication of a retrospective intent, Courts of Justice avoid—and the High Court of Madras declined in those three cases so to construe the Act." His Lordship, after guarding himself from being supposed to give any opinion on those cases which were distinguished by him from that under trial, proceeded:—"But we should add that *Madhavbhai* v. *Fattesing* (10 Bom. H. C. Rep. 487) must not be regarded as opposed to them, as, although the dates in that case, when now examined, show that the right of

LIMITATION—*contd.*

suit had been barred before Act IX. of 1871 came into force, that circumstance escaped the attention of the Court, and did not enter at all into its consideration when deciding the case."

17. —— *Extinction of Claim—Bar of Remedy—Revival of Debt—Act XIV. of* 1859, § 1, *Cl.* 12—*Act IX. of* 1871, *Sched. II., Art.* 149—*Act XV. of* 1877, § 28.] In 1842 one *H. C.*, a brother of the plaintiff, executed a mortgage of his share of the estate of his father, to the plaintiff, who was in possession of the family property as *kurta* and administrator of the estate, to secure the sum of Rs. 3,700 then due, and further advances to the extent of Rs. 8,000 which the mortgagee thereby agreed to make. The mortgage deed contained a proviso that if the mortgagor should "on demand" pay to the mortgagee the said sum of Rs. 3,700 and interest, and should also repay "on demand" the further advances, and such sums as should or might appear to be "due and owing" on any balances of account between the mortgagor and mortgagee, with interest, from the times when such balances should be struck, with annual rests on 30th April in each year, then the conveyance should be void. The deed contained a covenant to pay "on demand," and a right of entry was reserved to the mortgagee in default of payment "on demand." In 1847 an amicable partition of the family property was proposed, and it was agreed that a certain portion should be allotted to the plaintiff in satisfaction of the debt due to him by *H. C.*, but this arrangement was never carried out. In a suit brought in 1876 against the representative of *H. C.*, for foreclosure of the mortgage, the plaintiff alleged that no payment had ever been made in respect of the mortgage, nor any demand for payment till 1876. The defendant contended that the suit was barred by limitation:—*Held*, under the circumstances of the case, and the construction of the mortgage deed, *per Garth*, C.J., that a demand was necessary; *per Markby*, J., that the words "on demand" in the mortgage bond must be read (in the same way as they are always read in a promissory note and) not as postponing the date of payment, and that the money advanced was due as soon as the advances were made.

Per Garth, C.J., and *Markby*, J.—That it must be presumed that a demand was made in 1847, on the agreement to partition the property. The suit therefore was barred by Act XIV. of 1859, as being brought more than twelve years

Digitized by Google

LIMITATION—*contd.*

after the cause of action arose. That Act not only barred the remedy, but extinguished the right, and therefore the plaintiff could obtain no benefit from the extended period of limitation given by Art. 149, of Act IX. of 1871, which repealed the Act of 1859.

§ 149 of Act IX. of 1871 applies only to those cases where a part of the principal or interest of the mortgage debt has been paid.

Per Garth, C.J.—The 28th Section of the Limitation Act of 1877 (Act XV. of 1877) would seem to extend the doctrine that twelve years' adverse possession not only bars the remedy of the rightful owner, but extinguishes the right to property other than land; but *quære*, whether the same principle should be held to apply to debts. RAM CHUNDER GHOSAUL *v.* JUGGUTMONMOHINNEY DABEE. *Garth*, C.J., and *Markby*, J.....**I. L. Rep. 4 Cal. 283; 3 Cal. Rep. 336, 1878.**

Overruled by MOHESH LAL *v.* BUSUNT KUMAREE... **I. L. Rep. 6 Cal. 340; 7 Cal. Rep. 121.**

See **Vol. 2, Col. 813.**

18. —— *Limitation before Act XIV. of* 1859 *against Reversionary Heir.*] In a suit by a daughter's son, brought in 1858, to recover his maternal grandfather's share in the ancestral estates from his maternal aunts and the heirs of his maternal granduncles, the former pleaded a petition admitting the plaintiff's title as heir; the latter pleaded, *inter alia*, first, that since the death of the grandfather in 1824 neither the plaintiff nor his grandmother, mother, nor maternal aunts were in possession, and that therefore the suit was barred; secondly, in effect, that the plaintiff was not entitled to succeed.

Held, first, that the suit was not barred. The grandmother, who died in 1835, lived and was maintained as a member of the joint family (Bengal school), and the presumption was that she participated in the profits of the estate as a sharer. Limitation ran from her death, and deducting the periods during which the plaintiff and his mother were respectively under the disability of minority, the suit was in time.

Secondly, as to the plaintiff's title. Any admission thereof by the maternal aunts would neither bind the co-defendants, nor be evidence against them. The petition above named did not amount (even if its execution had been proved) to a conveyance or to a disclaimer of title, nor did it warrant a judgment against them. AUMIRTOLALL BOSE *v.* RAJONEEKANT MITTER... **L. Rep. 2 I. A. 113; 15 Beng. L. R. 10; 23 W. R. 214, 1874.**

S. C. under **Admission** and **Hindu Law — Inheritance — Daughter's Son. 2.**

19. —— *Laches—Act XIV. of* 1859, § 5—*Mesne Profits.*] The heirs and representatives of a mortgagor sued in 1869 to recover possession with mesne profits of property comprised in a *Zur-i-peshgee* lease executed in 1814, the mortgage debt due in respect thereof having been satisfied, from the appellants, who had purchased the same for valuable consideration without notice of the plaintiff's title. It appeared that as to a moiety of the property the appellant's vendor, a Mahomedan lady, derived her title under a *baimokasa* executed iu 1844 by her husband, who was one of the heirs of the mortgagee.

The appellants in the Courts below mainly relied on an alleged conveyance of the equity of redemption to the heirs of the mortgagee in 1841, and did not plead or prove that the execution of the *baimokasa* was a *boná fide* transaction.

Held, that the execution of the deed of 1841 not having been proved, the laches of the plaintiffs did not estop them from asserting their rights. The question was one of title, and the right to assert that title was to be determined by the law of limitation as it stood, which gave to mortgagors the period of sixty years within which to bring their suit, and no Court of Justice would be justified in diminishing that period on the ground of the laches of a party in the prosecution of his rights.

In the absence of any investigation by the Courts below into the *bona fides* of the *baimokasa*, the appellants not having pleaded limitation under § 5, Act XIV. of 1859:—

Held, that no distinction as regards the statutable period of limitation could be drawn in respect of the property included therein. Under the circumstances of laches and irregularity, mesne profits were allowed only from the date of the institution of the suit. JUGGERNATH SAHOO *v.* SYAD SHAH MAHOMED HOSSEIN...**L. Rep. 2 I. A. 48; 14 Beng. L. R. 386; 23 W. R. 99, 1874.**

Digitized by Google

LIMITATION—*contd.*

20. —— *Cause of Action*—Mocassa *Villages—Sale for Arrears of Revenue—New Cause of Action.*] The talook of a zemindar was sold in 1854 for arrears of revenue, and possession was given to the purchaser in 1855; it was subsequently represented by the zemindar to the Government that fifty of the villages had been wrongfully sold, as they were *mocassa* villages, which had been alienated from the zemindary and paid only a quit-rent to the zemindar, and were not subject to revenue.

In 1860 the Government admitted the ex-zemindar's right to the villages, and ordered an annual payment to be made to the ex-zemindar by way of compensation, and after resuming the villages made them over to the purchaser under the sale for arrears of revenue, adding Rs. 5,000 to his *peshkash*, but the plaintiff did not accept the compensation, and in 1868 sued for the recovery of the villages :—

Held, that more than twelve years having elapsed since the sale and dispossession, the suit was barred by Act XIV. of 1859, and that even if there had been in 1860 a new grant by Government, of the villages, to the purchaser at the revenue sale, that did not give a new cause of action to the plaintiff, who was suing under the title he had in 1854 and 1855, and no other title; and, not having had possession since his first dispossession, nothing that passed between the Government and the purchaser under the revenue sale affected the question of limitation. RAJA SRI CHAITANYA CHUNDRA *v.* THE COLLECTOR OF GANJAM .....**L. Rep. 1 I. A. 335; 22 W. R. 187, 1874.**

21.—— *Non-Payment of Rent by Occupancy Ryot—Title—Admission by Tenant of Liability to pay Rent—Adverse Possession.*] The non-payment of rent for a term of twelve years and more does not relieve an occupancy ryot from the status of a tenant. If the defendant recognizes the title of the plaintiff to take rent, the mere fact of the plaintiff abstaining for a number of years from taking it does not in itself create in the defendant an independent title in the land. As rent falls due year by year, or *kist* by *kist*, the failure to pay becomes a recurring cause of action, and therefore where the right to take rent is admitted by the ryot-defendant, no question of limitation can arise. PORESH NARAIN ROY *v.* KASSI CHUNDER TALUKDAR. *Morris* and *Prinsep*, JJ. .....**I. L. Rep. 4 Cal. 661, 1878.**

LIMITATION—*contd.*

22.—— *Execution of Decree—Formal Possession given to Decree-holder—Effect of.*] When a decree for possession of land is executed and possession delivered in the usual way, whether actual possession is thereby obtained or not, the defendant cannot thereafter successfully rely on the plea of limitation based on his wrongful possession previous to the execution.

Such formal delivery of possession to the decree-holder by an officer of the Court in execution of the decree is sufficient to give him a fresh cause of action, and, though he may never have obtained actual possession, he or his assigns may sue to recover possession at any time within twelve years from the time when such formal possession was given. *Peary Mohun Poddar* v. *Juggobundoo Sen* (24 W. Rep. 418) dissented from, as being opposed to the decision of the Privy Council in *Gunga Gobind Mundul* v. *Bhoopal Chunder Biswas* (19 W. Rep. 101). UMBICKA CHURN GOOPTA *v.* MADHUB GHOSAL. *Birch* and *Mitter*, JJ. ...**I. L. Rep. 4 Cal. 870; 4 Cal. Rep. 55, 1879.**

23. —— *Execution of Decree—Proceedings to enforce Decree.*] Application for the execution of a decree was made on the 21st of December 1864, and, in pursuance of such application the notice required by law was issued to the judgment-debtor. On the 7th February 1865, the Court executing the decree called on the decree-holder to produce proof of the service of such notice within four days. On the 23rd February 1865, in consequence of the decree-holder having failed to produce such proof, the Court dismissed the application. There was no proceeding either of the decree-holder or of the Court between the 7th and 23rd February 1865. On the 18th February 1868, application was again made for execution of the decree :—

Held, that the proceeding of the Court of the 23rd of February 1865, striking off the former application for default of prosecution, was not a proceeding to keep the decree alive, and that the latter application was therefore beyond time. RAGHU RAM *v.* DANNU LAL. *Pearson* and *Oldfield*, JJ.....**I. L. Rep. 2 All. 285, 1879.**

24. —— *Act XV. of* 1877, *Sched. II., Arts.* 66, 67, 75, 80—*Instalment Bond—Cause of Action.*] *B.* and *S.* executed a bond, dated the 15th August 1874, in the following terms :—"We having jointly and severally borrowed and received the sum of Rs. 15,000" from the plaintiff,

Digitized by Google

LIMITATION—*contd.*

" do hereby covenant and agree to pay or cause to be paid unto" the plaintiff " the said sum within 3 years from the date hereof, interest on the same at the rate of 8 per cent. per annum being payable half-yearly, *viz.*, on the 30th June and 31st December in each calendar year, and premium on life policies to be endorsed to" the plaintiff " periodically according to the rules of the Insurance Company. In the event of failure in the payment on the due date of the interest and premia, and whether advice be or be not given of such default, we hereby jointly and severally render ourselves liable to pay up the full amount of this bond, or such portion or balance thereof as may be due or may become due, according to the account" of the plaintiff, " from date of such default to payment of loan in full, and other charges that may or shall be incurred on account of the said loan. It shall be optional to" the plaintiff " to claim, and, if necessary, to sue for, the full amount on the bond, on the failure of any one or more stipulated payments, or on the full expiry of the period this bond was originally intended to run, if all its provisions had been fulfilled by us."

Policies of insurance on the lives of *B.* and *S.* were deposited with the plaintiff as collateral security for the repayment of the loan, and to these policies the provisions in the bond as to the payment of premia related. No interest was paid on the bond, but there was no default in the payment of the premia.

On the 16th July 1878, the plaintiff instituted a suit to recover the money due on the bond. *B.* alone defended the suit, and pleaded that it was barred by limitation, 1st, with reference to Art. 75, Sched. II. of Act XV. of 1877, that inasmuch as interest was payable half-yearly, the bond was one payable by instalments, and default having been made in the payment of interest, limitation ran from the time when the first default was made; and 2ndly, that if the bond was not an instalment bond, inasmuch as the plaintiff's cause of action arose on the first default, limitation ran from that date, notwithstanding the concluding words of the bond:—

Held by *Stuart*, C.J., that the bond was not an instalment bond, but simply a bond acknowledging the debt with interest payable half-yearly, with a proviso that if not so paid, the obligors should be liable to pay up the whole amount from date of such default, *i.e.*, from date of failure in payment of interest, and that the period

LIMITATION—*contd.*

of limitation ran from the expiration of three years allowed by the bond, *viz.*, from the 15th August 1877; and that the suit, therefore, was not barred.

By *Spankie*, J.—That the bond was not one payable by instalments, and therefore that Art. 75, Sched. II. of Act XV. of 1877 did not apply to it. Nor did Art. 67 apply, inasmuch as though the 15th August 1877 was not specified in so many words as the date for payment, yet the bond was repayable within three years from its date, the 15th August 1874, and therefore it could not be said that the bond was one in which no day for repayment had been specified. Nor did Art. 68 apply, inasmuch as the bond was not subject to a condition. The provision, however, in the bond imposing a liability for immediate demand of the entire amount due on the bond before the expiration of the term of the bond, on the occasion of default of payment, placed it under Art. 80, and limitation would run from the date when the bond became due. According to the terms of the bond in the second and third clauses, which must be read together to understand the real meaning of the parties, the obligee was not called upon to choose whether he would at once demand the amount due, or postpone his suit until the full term of the bond had expired, unless there had been default in the payment of both premia and interest; and if the default did not extend beyond the interest or premia, a complete and present cause of action had not arisen. There having been no default in payment of premia, there was no such default as gave the plaintiff a complete and present cause of action because of the default of the payment of interest, and the suit, therefore, was not barred by limitation. BALL *v.* STOWELL.....**I. L. Rep. 2 All. 322, 1879.**

25. —— *Suit for Damages—Suit for Money received to Plaintiff's Use—Act XV. of* 1877, *Sched. II., Art.* 62.] The holder of a decree for money, which had been sold in execution of a decree against him, sued the auction purchaser, the sale having been set aside, for the money he had recovered under the decree:—

Held, that the suit was not one for damages, but for money payable by the defendant to the plaintiff, for money received by the defendant for the plaintiff's use, to which the period of limitation applicable was three years. BHAWANI KUAR *v.* RIKHI RAM. *Spankie* and *Straight*, JJ. **I. L. Rep. 2 All. 354, 1879.**

Digitized by Google

LIMITATION—*contd.*

26. —— *Constructive Trust.*] *B. P.* and *K.*, his son, were jointly entitled to one moiety of certain property, and *C.* and *B.*, the brother of *B. P.*, and *B.*'s son *D. P.*, were in like manner jointly entitled to the other moiety. *B.* and *D. P.* were transported for life in 1840, their wives being alive at the time. On the death of *D. P.*'s wife, *B.*'s wife being already dead, *K. L.* mortgaged the entire property, in May 1873, to the plaintiff, who afterwards bought in the same at a sale in execution of a decree obtained by him on the mortgage. *D. P.* having returned from transportation under a free pardon in 1877, and the plaintiff being prevented by him from obtaining possession of the property, the plaintiff sued in 1878 to establish his title to, and for possession of, the entire property. The lower appellate Court held that no express trust had been created, as alleged by the defendant, of the moiety of the property which belonged to him and his father, with *K. L.* and his father, for the benefit of the defendant and his father, and that the defendant's wife had died in 1860 or 1861, and that the defendant's right was, therefore, extinguished :—

Held, by *Oldfield*, J., that even assuming the facts to be as found by the lower appellate Court, that *B. P.* and *K. L.* never made over the rents to the wives of *D. P.* or his father, and themselves took possession on the transportation of the owner, although there might have been no express and actual trust, yet there were circumstances which amounted to fraudulent conduct on the part of *B. P.* and *K. L.*, such as would, by equitable construction, convert their holding into that of trustees. The parties were nearly related to each other, living in what might be assumed to be terms of close intimacy and mutual confidence, and the appropriation of the absent relatives' property could only have been carried out by a shameful abuse of the friendly and confidential terms on which they had lived, and by taking advantage of the enforced absence of the owners, who had no means of asserting their rights.

But upon the evidence, *held*, that *B. P.* and *K. L* never asserted, or intended to assert, any title adverse to *D. P.*, who was, therefore, entitled to succeed.

By *Straight*, J.—That under all the circumstances of the case, and from the relationship between the parties, a constructive trust existed in *B. P.* and *K. L.* for and on behalf of *B.* and *D. P.* from the day their imprisonment commenced. By his imprisonment *D. P.* was placed under a disability, just as much as a person "beyond the seas," or "lunatic," or "under age," and was thus deprived of the power of looking after his own interests, or asserting his rights, and during such time as it lasted, *B. P.* and *K. L.*, so far as his share in the property was concerned, occupied towards him a fiduciary position, of which *K. L.* had taken advantage in fraud of his *cestui-que-trust*. Till *D. P.* obtained his release, it would have been impossible for him to know what had happened; his wife was dead, and he seemed to have no children to complain of the misappropriation by *K. L.*, or any means of gathering information of his misconduct. No limitation, therefore, could affect the rights of *D. P.* DURGA PRASAD *v.* ASA RAM....I. L. Rep. 2 All. 361, 1879.

LIMITATION—*contd.*

27. —— *Suit by Representative of Absconding Shareholder to recover Share from Purchaser from Co-Sharer who had taken Possession—Trust—Entry in* Wajib-ul-Arz—*Act IX. of* 1871, § 10.] The plaintiffs claimed, as representatives of certain co-sharers in a village, who had absconded from the village, to recover the share of such co-sharers from the defendant, who had purchased it from another co-sharer, in whose hands, as the plaintiffs alleged, their ancestors had, when they absconded, left their share as trustees for them, and the plaintiffs rested the proof of the trust on an entry in the *Wajib-ul-Arz* or village administration paper of 1864. The defendant denied the creation of the trust, and pleaded limitation :—

Held, that assuming the plaintiffs to be the representatives of the persons whose representatives they claimed to be, in order to establish that the defendant's vendors held their property as their trustees, after their absconding, there must be evidence that they accepted such a trust, and this fact could not be taken as proved by a vague and general entry made in an administration paper of a date subsequent to the relinquishment of the property by the absconders, which referred to future years, to which the defendant's vendors were no parties, and which merely stated in general terms that absconders from the village should receive back their property on their return.

Held also, that assuming such trust to be established, the claim was, notwithstanding, barred by limitation, since the defendant was a purchaser from the trustee in good faith for

Digitized by Google

LIMITATION—*contd.*

value, and without notice of the trust, and was not the representative of the trustee within the meaning of § 10 of Act IX. of 1871, and had been in possession for more than twelve years. PIAREY LAL *v.* SALIGA. *Spankie* and *Oldfield*, JJ.....**I. L. Rep. 2 All. 394, 1879.**

28. —— *Promissory Note payable on Demand—Act IX. of* 1871*—Act XV. of* 1877, § 2, *and Sched. II., Art.* 73.] In a suit instituted on the 20th November 1878 on a promissory note dated the 4th of July 1870, payable on demand, demand having been made on the 10th September 1876:—

Held, that the suit was within the indulgence of § 2 of Act XV. of 1877, and was not barred by limitation. The point from which, under Act XV. of 1877, the period of limitation was to be calculated was the date of the note, and not, as under Act IX. of 1871, the date of the demand. But the provisions of § 2 of Act XV. of 1877 were intended to prevent the sudden extinction of rights of action which had arisen under the more favourable provisions of Act IX. of 1871, and the "shorter period" mentioned, when applied to the present and the like cases, must, therefore, be taken to mean not only the period of so many years or months allowed by the schedule, but also the point at which that period, according to the provisions of the old Act, would terminate, and within which, therefore, a suit might have been instituted under it had it remained in force.

The language of Acts IX. of 1871 and XV. of 1877 leads to the conclusion that by each of those enactments the starting-point and period given in its schedule were to take the place of those given by the Act preceding it, in the case of all suits instituted after the date of the Act coming into force, and that the expiration of the period, calculated with reference to the Act in force at the date at which the note was executed, does not necessarily affect the remedy. APPASAMI *v.* AGHILANDA. *Turner*, C.J., and *Innes*, J...**I. L. Rep. 2 Mad. 113, 1879.**

29. —— *Suit for Pre-emption—Act XV. of* 1877, *Sched. II., Art.* 10*—Purchase by Mortgagee in Possession.*] In a suit for pre-emption, where the property had been purchased by the mortgagee in possession:—*Held*, that the purchaser obtained physical possession of the property under the sale, not from the date of the sale deed, but when the contract of sale became

LIMITATION—*contd.*

completed; and, therefore, the contract of sale having been completed on the payment of the purchase money, the suit, which was brought within one year from the date of such payment, was in time. LACHMI NARAIN LAL *v.* SHEVAMBAR LAL. *Oldfield* and *Straight*, JJ.....**I. L. Rep. 2 All. 409, 1879.**

30. —— *Act XIV. of* 1859, § 1, Cl. 10*—Promissory Note payable by Instalments—Waiver of Default.*] A promissory note, dated 2nd April 1868, payable by half-yearly instalments, contained a stipulation that in default of payment of any one instalment, the whole amount of the principal and interest should be paid at once. Default was made in payment of the first instalment, which fell due on 2nd October 1868. But the plaintiff alleged that about four months after this default, the defendant made, and the plaintiff accepted, payments on account of the first instalment.

Default being made in payment of the second instalment, the plaintiff brought his action on 19th October 1871, to recover the whole amount of principal and interest due on the note.

Held, that the right to bring the suit under Act XIV. of 1859, § 1, Cl. 10, accrued to the plaintiff on the 2nd October 1868, and that, having omitted to bring it for more than three years, his suit was barred.

The plaintiff's right to immediate payment of the note was not, under the note itself, subject to be defeated by any subsequent payment, nor was it superseded or suspended by any fresh agreement between the parties; nor could any subsequent payment by the defendant (assuming such payment to have been made) of part of that for which they had already become liable, in the absence of any fresh agreement, supersede or suspend such right. *Ramkrishna* v. *Bayaji* (5 Bom. H. C. Rep. A. C. J. 35) overruled. GUMMA DAMBERSHET *v.* BHIKU HARIBA...**I. L. Rep. 1 Bom. 125, 1876, F. B.**

31. —— *Act XIV. of* 1859, § 1, Cl. 12*—Mortgage Bond—Interest in Immoveable Property.*] In a duly registered mortgage bond, dated the 21st of June 1856, the obligor covenanted to repay principal moneys and interest in Jeyt 1274 F. S., and mortgaged certain specified lands as security. The lands so pledged were subsequently sold to the appellant in execution of a decree obtained upon another bond made

Digitized by Google

LIMITATION—*contd.*

by the obligor, subsequent and subject to the former. In a suit brought on the 30th August 1871 against the obligor and the appellant, to recover the amount due on the first bond from the former personally, and also by sale of the mortgaged land, it was contended that the suit was barred by Cl. 16, § 1, of Act XIV. of 1859 :—

Held, that the suit, being for the recovery of immoveable property, or of an interest in immoveable property, and founded not upon the contract to pay the money, but upon the hypothecation of the land, fell within Cl. 12, § 1 of Act XIV. of 1859, and was not barred. JUNESWAR DASS *v.* MAHABEER SINGH...**L. Rep. 3 I. A. 1, 1875 ; I. L. Rep. 1 Cal. 163 ; 25 W. Rep. 84.**

32. —— *Act XIV. of* 1859, § 1, Cl. 13—*Claim to Maintenance under a Will.*] A suit for maintenance and arrears under a will is not barred after the expiration of twelve years from the testator's death, under Act XIV. of 1859, § 1, Cl. 13, where the will which confers the right, does not also create in the plaintiff's favour a charge on the inheritance of the testator's estate.

By common law the right to maintenance is one accruing from time to time according to the wants and exigencies of the widow. NARAYANRAV RAMCHANDRA PANT *v.* RAMABAI... **L. Rep. 6 I. A. 114, 1879 ; I. L. Rep. 3 Bom. 415 ; 6 Cal. Rep. 162.**

S. C. under **Hindu Law—Maintenance of Widow. 7.**

33. —— *Act XIV. of* 1859, § 1, Cl. 16—*Suit for Maintenance.*] The provision of the Limitation Act XIV. of 1859, applicable to suits brought under that Act, for maintenance not chargeable on any estate, is Cl. 16 of § 1, which gives six years from the accruer of the cause of action, which in such cases does not arise until there has been a demand and refusal. KULO NILKANTH *v.* LAKSHMIBAI. *Westropp*, C.J., and *Pinhey*, J.....**I. L. Rep. 2 Bom. 637, 1878.**

34. —— *Act XIV. of* 1859, § 8—*Accounts between Merchants—Principal and Agent.*] An agreement between a principal and agent commenced with an admitted balance, and clearly contemplated the existence of an account current between the parties, containing mutual items of debit and credit ; and contained a stipulation that on the adjustment of the accounts the principal should be bound to pay such balance as might then be found due by him. The account

LIMITATION—*contd.*

was kept accordingly as a continuous account, and contained several items which brought down the mutual dealings to March 1868. The agent sued in February 1871 to recover the balance due to him on the account :—

Held, that the account being one continuous account between principal and agent, with debits and credits on each side of it, the case fell within § 8 of Act XIV. of 1859, and was not barred by limitation, even as to the items which were dated more than three years before the institution of the suit. WATSON *v.* AGA MEHEDEE SHERAZEE...**L. Rep. 1 I. A. 346, 1874.**

S. C. under **Account. 2.**

35. —— *Act XIV. of* 1859, § 15—*Juridical as opposed to Physical Possession—Possession by Agent.*] A mere agent, who is put into possession of property by his employer upon his employer's behalf, cannot by merely denying his employer's right to possession hold the property against his employer, or under the provisions of § 15 of Act XIV. of 1859, turn his employer out of possession which he has regained without committing any act of which the agent can complain other than that of returning upon his own property. MADHUB CHUNDER GIREE *v.* SHAM CHAND GIREE. *Markby* and *Mitter*, JJ.....**I. L. Rep. 3 Cal. 243, 1877.**

S. C. under **Stat. 24 and 25 Vict., C. 104, § 15. 6.**

36. —— *Act XIV. of* 1859, §§ 20, 21—*Execution of Decree for Money* — Res judicata.] The appellant obtained a decree against the respondent on the 5th of October 1866. Subsequently to the decree, the respondents made various payments on account up to October 1869. On the 22nd of that month the appellant made a *bonâ fide* application for execution thereof in respect of the unpaid balance. The application was refused by the Court which made the decree, but the defendant made further payments on account.

On the 4th of May 1871 the appellant made a fresh application for execution, which was eventually again refused, the Chief Court of the Punjaub holding that, the decree having been obtained before the introduction of Act XIV. of 1859 into the Punjaub, the case must be governed by the provisions of § 21 and not by § 20 of that Act :—

Held, that this order must be reversed. The application of the 22nd of October 1869 being *bonâ fide*, though unsuccessful, was a proceeding

Digitized by Google

LIMITATION—*contd.*

to enforce the judgment within the meaning of § 20 of Act XIV. of 1859, and, having been taken within three years next preceding the application made on the 4th of May 1871, such last mentioned application was not barred by § 21 of Act XIV. of 1859, and ought to have been granted. The words in § 21 of Act XIV. of 1859 "nothing in the preceding section shall apply to a judgment in force at the time of the passing of the Act" mean that nothing in the preceding section should prejudicially affect the right of a creditor under a judgment in force at the time of the passing of the Act; and the words "but process may be issued" mean that, notwithstanding any thing mentioned in the preceding section, execution might issue either within the time limited by law, or within three years next after the passing of the Act, whichever should first expire.

DELHI AND LONDON BANK *v.* ORCHARD...**L. Rep. 4 I. A. 127, 1877; I. L. Rep. 3 Cal. 47.**

S. C. under **Construction of Statutes. 1**, and **Res Judicata. 2.**

37. —— *Act IX. of* 1871, § 4—*Explanation—Petition* in formâ Pauperis—*Act VIII. of* 1859, § 308.] *A.* put in a petition to sue *in formâ pauperis* for possession of certain foreclosed property within the time specified by the Limitation Act, but on failing to appear on two occasions when called upon to give evidence as to her pauperism, the case was struck off so far as the application to sue *in formâ pauperis* was concerned. At the instance of *A.* the case, however, was again re-opened, and a date fixed for her appearance. Two days prior to this date, but at a time beyond the period fixed by the Limitation Act, *A.* put in a petition asking that the petition which she then made to have her suit proceed as an ordinary suit might be joined with her application to sue *in formâ pauperis*, and that the suit might be duly tried in the ordinary way. She also paid in the regular amount of stamp duty for an ordinary suit. On the point of limitation :—*Held*, that the plaint must be considered as filed not on the day of filing the application to sue *in formâ pauperis*, but on the day on which the stamp duty was paid, and application made to have the suit tried in the ordinary way.

LIMITATION—*contd.*

The explanation to § 4 of the Limitation Act IX. of 1871 only applies in cases where, under § 308 of Act VIII. of 1859, the application for leave to sue *in formâ pauperis* is granted, and the application is numbered and registered as a suit. CHUNDER MOHUN ROY *v.* BHUBON MOHINI DABEA. *Markby* and *Prinsep*, JJ...**I. L. Rep. 2 Cal. 389, 1877.**

But *see* SKINNER *v.* ORDE...**L. Rep. 6 I. A. 126.**

Under **Petition for Leave to sue in forma Pauperis. 2.**

38. —— *Act IX. of* 1871, § 10 — *Express Trust—Adverse Possession.*] One *G. B.*, a Hindu, died on 4th February 1860, having made a will, dated 20th January 1860, whereby he appointed the defendant his executrix, and directed her to divide whatever ready money might remain after the payment of the legacies directed by the will to be paid, and the family dwelling-house and other immoveable and moveable property, among a class of persons, some of whom were not in existence at the date of the testator's death; and which bequest was therefore wholly void. (See this case on this point under HINDU LAW, WILL. 4.) The defendant proved the will and took possession of the property. In a suit brought by the plaintiff, the testator's widow, more than twelve years after his death, to recover from the defendant, the executrix, the property comprised in the above void bequest, with the accumulations, as being the sole heiress of the testator according to Hindu Law:—

Held, that the suit was barred. The bequest to the class being void, the plaintiff was, as to the immoveable property, entitled to immediate possession on the death of her husband, and the cause of action as to such property accrued to her at that date. As to the moveable property, her own allegation showed that her right to possession thereof had accrued more than twelve years before the suit.

In a Hindu will before the Hindu Wills Act there is no room and no necessity for the doctrine of resulting trusts, which arises out of the conflict between equitable and legal estates. The Hindu executor takes no estate, but only a power of management, and upon the special purpose for which the executor is to hold the property failing, the property undisposed of vests at once in the heir, who can sue for it. The

Digitized by Google

LIMITATION—*contd.*

defendant's possession, therefore, was adverse to the plaintiff from the testator's death. And though the relation between the defendant and the plaintiff was a fiduciary one, yet the 10th Section of Act IX. of 1871 was not intended to comprise all fiduciary relations whatever.

The words of that section mean that where a trust has been created expressly for some specific purpose or object, and property has become vested in a trustee upon trust (either from such person having been originally named as a trustee, or having become so subsequently by operation of law), the person or persons who for the time being may be beneficially interested in that trust may bring a suit against such trustee to enforce that trust, at any distance of time, without being barred by the law of limitation.

The language of the section is specially framed so as to exclude implied trusts, or such trusts as the law would infer from the existence of particular facts or fiduciary relations. By "specific purpose" must be meant a purpose which has been specified by the person who created the trust. KHERODEMONEY DOSSEE *v.* DOORGAMONEY DOSSEE. *Garth*, C.J., and *Markby*, J...**I. L. Rep. 4 Cal. 455 ; 2 Cal. Rep. 112, 1878.**

38a.—— *Liability of Lands purchased from a Hindu Devisee for Debts of his Testator—Constructive Notice—Burden of Proof — Limitation Act IX. of* 1871, § 10, *Sched. II., Arts.* 118, 133, 134—"*Trust for a Specific Purpose.*"] *Per Pontifex*, J.—The question how far lands purchased from a Hindu devisee are liable in the hands of the purchaser for the testator's debts, stands pretty much on the same footing as a similar question would under the present English law. In English law the liability did not exist until it was expressly created by the Stat. 3 and 4 Wm. and Mary, C. 14. Prior to that statute freehold lands of inheritance which descended to the heir were, by common law, assets for the payment of the ancestor's debts by specialty, as by bond or covenant in which the heir was named. But when general testamentary power over freehold lands of inheritance was conferred by Stat. 32, Henry VIII., C. 1, the ancestor acquired power by disposing of the land by will to deprive his specialty creditors of their common law right to be paid out of it, as the devisee was neither at law nor in equity liable to the payment of the testator's debts in respect of the land devised ; the devisee taking the same

LIMITATION—*contd.*

position as an alienee *inter vivos* from his testator. The heir-at-law also, to whom the lands descended, could always defeat the creditors of his ancestor, by alienating the lands before suit by the creditor. To remedy this, the 3 and 4 Wm. and Mary, C. 14, §§ 5 and 7, made heirs and devisees, in case they were alienated, answerable to the value of the lands so alienated, with a saving that lands *bonâ fide* aliened before action brought should not be liable to execution by the ancestor's creditors. That statute was re-enacted and extended by 1 Wm. IV., C. 47, and by 3 and 4 Wm. IV., C. 104, lands were made assets to be administered in Courts of Equity for the payment of simple contract as well as specialty debts ; and heirs and devisees were made liable in Equity to the same suit by all creditors, as before the passing of the Act they were liable to at the suit of creditors by specialty in which the heirs were bound.

The result of these Acts in England has been in effect to put a construction upon the words "*bonâ fide* alienee before action brought," which enables the creditors of the ancestor to follow his lands into the possession of a purchaser from the heir or devisee, if it can be proved that such purchaser knew—(1) that there were debts of the ancestor or testator left unsatisfied ; and also (2) that the heir or devisee to whom he paid his purchase money intended to apply it otherwise than in the payment of such debts. But a purchaser ignorant on either of these points has a safe title, for no duty is cast on the purchaser from the heir or devisee to inquire whether there are any debts of the ancestor or testator, or to see to the application of his purchase money, even when there is an express charge of debts by the testator on the devised estate,—at least when the devisee is also executor ; and even when there is an express charge of debts, the burden of proof is entirely on the creditor to show that the purchaser from the devisee had notice that the latter intended to misapply the purchase money.

In India, neither in the case of the heir nor of the devisee has there been a direct statutory provision, as in England, that lands may be followed in the hands of a purchaser, unless he is a *bonâ fide* alienee, but that, being a principle of natural equity, has been applied by the Courts to the cases of purchases from Hindu heirs and devisees, so as to make the law in effect accord with English law as it now exists. But there is no authority for holding that the creditor of a

Digitized by Google

LIMITATION—*contd.*

Hindu is in any better position than the creditor of an English ancestor or testator.

For a purchaser to be affected with constructive notice through his solicitor, who also acts for the mortgagor, the solicitor himself must have actual notice, and cannot be treated as possessing the latent knowledge of his client the mortgagor.

Held, upon the evidence in a suit brought to impeach certain mortgages made more than thirteen years before the institution of the suit, by the executors and residuary devisees of a Hindu testator to the defendant, that (applying the above principles) the plaintiffs had failed to make out their case.

Held, on appeal—by *White*, J.,—that the will of the testator appointing the mortgagors executors, not containing any specific bequest to them as executors, nor any devise to them of property for the purpose of paying debts, nor any direction for the payment of the testator's debts, and the mortgagors not holding the residue bequeathed to them in trust for any purpose, even assuming that the mortgagors were in the same position as English executors, who may by their office take a property in the assets for the purpose of applying them in the due course of administration, yet that executors in whom a property in the assets is vested by virtue of their appointment, but to whom no property is specifically or expressly bequeathed for the purpose of paying debts, are not, as regards creditors of their testator, persons in whom property is vested in trust for a specific purpose within the meaning of § 10 of Act IX. of 1871, the words "vested in trust for a specific purpose" in that section being used in a restrictive sense, and limiting the character and nature of the trust attaching to the property which is sought to be followed. The phrase is a compendious form of expression for trusts of the nature and character mentioned in Arts. 133 and 134 of Sched. II., Act IX. of 1871, *viz.*, such as attach to property conveyed in trust, deposited, pawned, or mortgaged. *Held*, therefore, that the plaintiff's suit was barred by limitation (Art. 118, Sched. II., Act IX. of 1871).

Per Garth, C. J.—That even assuming that the defendant had, at the time of the mortgages, notice of the plaintiff's claim, yet the property in suit could not be considered as vested in the defendant "in trust for any specific purpose" within the meaning of § 10 of Act IX. of 1871.

LIMITATION—*contd.*

The words "in trust for a specific purpose" are intended to apply to trusts created for some defined or particular purpose or object, as distinguished from trusts of a general nature, such as the law imposes upon executors and others who hold recognized fiduciary positions. The estates in question could not be said to be subject to any specific trust in the defendant's hands any more than they were in the hands of the mortgagors, and the only trust to which they could be subject in their hands, was that general trust upon which a Hindu executor holds the whole of the estate which he represents.

Lallubhai Bapubhai v. *Mankuvarbai* (I. L. Rep. 2 Bom. 415) distinguished, on the ground that it was decided under § 2 of Act XIV. of 1859, which contains no words restricting the scope of the section to trusts for a specific purpose.

The plaintiff's suit, therefore, was barred by limitation (Art. 118, Sched. II., Act IX. of 1871). GREENDER CHUNDER GHOSE *v.* MACKINTOSH... **I. L. Rep. 4 Cal. 897; 4 Cal. Rep. 193. 1879.**

39. —— *Act IX. of* 1871, § 15—*Act XVIII. of* 1873.] *Semble*, that the provisions of § 15 of the Limitation Act IX. of 1871 are not applicable to suits or applications under Act XVIII. of 1873. TIMUL KUARI *v.* ABLAKH RAI. *Turner* and *Spankie*, JJ...**I. L. Rep. 1 All. 254, 1876.**

40. —— *Act IX. of* 1871, § 15 "*Suit*"—*Application for Execution of Decree.*] *Held* by the majority of the Full Bench, that applications for execution of decrees are not "suits" within the meaning of § 15 of Act IX. of 1871, and therefore, in computing the period of limitation for the execution of a decree, the time during which the decree-holder was endeavouring to obtain execution of the decree in a Court without jurisdicton, cannot be excluded.

Per Stuart, C.J.—An application for execution of a decree is a "suit" within the meaning of § 15 of Act IX. of 1871. A suit under that section means not only a suit or action in an exclusively technical sense, but simply and generally any proceeding intended and adapted to the recovery or vindication of any right or demand or material advantage. JIWAN SINGH *v.* SARNAM SINGH .....**I. L. Rep. 1 All. 97, 1875.**

Digitized by Google

LIMITATION—*contd.*

41. —— *Act IX. of* 1871, § 15—*Proceedings in Wrong Court.*] Plaintiff, as payee of an order drawn by the defendant, at Ahmedabad, where the defendant resided, on a firm at Bankok, in Siam, and dishonoured on presentation, sued the defendant, and an agent of the Bankok firm who resided at Surat, in the Court of the Subordinate Judge at Surat. Permission to proceed with the suit against the defendant (the drawer) having been refused by the High Court, the plaintiff withdrew his plaint and filed his suit in the Court at Ahmedabad against the drawer alone.

The Subordinate Judge rejected the claim as barred by limitation. *Held*, on appeal, by the High Court, that whether a suit was pursued *bonâ fide* and with diligence, must in almost every case be a question of degree, and the same course of action which on the part of a plaintiff in Bombay within reach of skilled advice would indicate bad faith or want of diligence, might be consistent with both good faith and diligence in a Mofussil community unfamiliar with the refinements of the mercantile law and practically *inops consilii*; and, there being no reason to suppose that the defendant had been prejudiced by the erroneous proceedings, without laying down any general rule, or saying that a similar indulgence should be granted in any future case a deduction might properly be allowed of the time during which the suit was pending in the Surat Court, such deduction to run from the filing of the plaint to the final refusal of the High Court to allow the suit to proceed at Surat against the defendant. *Held* also that the plaintiff ought not to have joined the drawer (defendant) and the Bankok firm as defendants in the same suit. SHETH KAHANDAS NARANDAS *v.* DHAIABHAI. *West* and *Pinhey*, JJ...**I. L. Rep. 3 Bom. 182, 1879.**

S. C. under **Hundi.**

42. —— *Act IX. of* 1871, § 20—*Promise—Bond in Consideration of barred Debt.*] It is clear from § 25, Cl. 3, of the Indian Contract Act (which preserves the well known rule of law that a time-barred debt is a sufficient consideration to support a contract), that the "promise" referred to in § 20 of Act IX. of 1871, is a promise, introduced by way of exception, in a suit founded on the original cause of action, and not a promise constituting a new contract, and extinguishing the original cause of action. A suit, therefore, is not barred which is brought on a bond executed in consideration of a barred debt, after it had become barred. RAGHOJI BIKAJI *v.* ABDUL KARIM. *Melvill* and *Kemball*, JJ.....**I. L. Rep. 1 Bom. 590, 1876.**

Followed in CHATUR DAGTI *v.* TULSI. *Westropp*, C.J., and *Melvill*, J..... **I. L. Rep. 2 Bom. 230, 1877.**

43. —— *Act IX. of* 1871, § 20—*Acknowledgment of Debt—Execution Proceedings.*] The word "debt" in §§ 20 and 21 of Act IX. of 1871, applies only to a liability for which a suit may be brought, and does not include a liability for which judgment has been obtained; therefore when the last application for execution of a decree had been made on the 14th December 1872, and a notice under § 216 of Act VIII. of 1859 issued on the 19th January 1873, and on the 28th April 1873 the judgment debtor filed a petition notifying part payment, which petition was signed by the judgment creditor:—

Held, in an application for execution of decree made on the 27th April 1876, that further execution was barred by limitation. KALLY PROSONNO HAZRA *v.* HEERA LAL MUNDLE...**I. L. Rep. 2 Cal. 468.**

Followed in MUNGOL PRASHAD *v.* SHAMA KANTO LAHORY CHOWDHRY.....**I. L. Rep. 4 Cal. 708**, *infra*.

44. —— *Act IX. of* 1871, § 20—*Acknowledgment in Writing of Debt by Judgment-Debtor—Expired Decree.*] An acknowledgment in writing of a judgment debt by a judgment debtor is not such an acknowledgment as is contemplated by Act IX. of 1871, § 20, and will not, therefore, operate to extend the period of limitation in favour of the judgment creditor. The "debt" referred to in that section is not a judgment debt, but a liability to pay money, for which a suit can be brought.

If a decree has once been allowed to expire, no subsequent application, though made *bonâ fide*, can revive it. *Kally Prosonno Hazra* v. *Heera Lal Mundle* (I. L. Rep. 2 Cal. 468) and *Bissessur Mullick* v. *Maharaja Dhiraj Mahatab Chund* (B. L. Rep., Sup. Vol. 967; S. C. 10 W. Rep., F. B., 8) followed MUNGOL PRASHAD DICHIT *v.* SHAMA KANTO LAHORY CHOWDHRY. *Morris* and *Prinsep*, JJ...**I. L. Rep. 4 Cal. 708;**

Digitized by Google

LIMITATION—*contd.*

Reversed **L. Rep. 8 I. A. 123; I. L. Rep. 8 Cal. 51; 8 Cal. Rep. 113.**

See **Vol. 2, Col. 847.**

See **Kisbandi.**

HEERA LAL MOOKHOPADHYA *v.* DHUNPUT SINGH...**I. L. Rep. 4 Cal. 500.**

45. —— *Act IX. of* 1871, § 21—*Bond—Limitation—Act XIV. of* 1859—*Revival of Right to sue by Payment of Interest.*] By a bond dated the 11th of March 1866, the rent of certain lands was assigned to the lender as security for the payment of the interest. No date was specified for repayment of the principal. The interest was regularly paid up to October 1871. In a suit brought in June 1874 for the principal and interest due on the bond :—

Held by *Holloway*, J.—That assuming that the period of limitation for a suit on the bond, under Act XIV. of 1859, was three years, and that it had run out both before action brought, and before Act IX. of 1871 came into force, yet that § 21 of that Act operated to save the action. Act XIV. of 1859 did not destroy the right, but only barred the remedy, so that when Act IX. of 1871 came into force there was still a contractual right deprived of its action, but which could at any time recover it by any mode which the law recognized, and the right of action in the present case was restored by the payment of interest.

Held by *Morgan*, C.J.—No question of limitation arose. The lender was constituted a trustee and receiver of the rents and profits of the land, for the benefit of himself and other persons interested, and it was on an adjustment of his accounts that the principal became payable.

His Lordship added—"If it had been necessary to consider the operation of Act IX. of 1871, I should have hesitated to hold that it allowed a suit to be brought in any case where the right of suit had already ceased to exist under the old law.

"When the period appointed for limitation is, by the law for the time being in force, complete, the remedy by suit is gone for ever, unless the Legislature thinks fit to make the old right again actionable. I find no such intention expressed in the new Act IX. of 1871. The 21st and other sections in Part III. do no more than provide for

LIMITATION—*contd.*

the mode of computation in cases where it becomes necessary to compute a fresh period." VALLIA TAMBURATTI *v.* VIRA RAYAN...**I. L. Rep. 1. Mad. 228, 1876.**

46. —— *Act IX. of* 1871, § 21 — *Bond—Payment of Interest—Revival of Right to sue.*] In a suit brought on the 11th of September 1874, on a registered promissory note made on the 9th of August 1867, payable on the 10th of April 1868, it appeared that interest was paid on the 14th November 1868 and 18th April 1870.

Held, that Act IX. of 1871 was applicable to the suit, and as that Act by § 21 had made the payment of interest a mode of extending the period of limitation for a suit upon a bond, and did not expressly require that the payment should have been made after the date on which it came into force, there was no reason why a payment of interest before that date should not be sufficient, and, therefore, that the suit was not barred by limitation. TEGARAYA MUDALI *v.* MARIAPPA PILLAI...*Morgan*, C.J., and *Kindersley*, J.....**I. L. Rep. 1 Mad. 264, 1877.**

47. —— *Act IX. of* 1871, § 21—*Payment of Interest—Contract in Writing.*] To a suit filed upon an account stated and signed by the defendant the latter pleaded limitation. The defendant had at different times made payments to the plaintiff, in reduction of the general balance of account against him, but without intimating that any of such payments was to be appropriated in satisfaction of the interest due on his debt.

Held, that the plaintiff could not claim the benefit of § 21, Act IX. of 1871, as there had been no payment of interest "as such," and that the claim was barred.

Held also, following *Amrital* v. *Maniklal* (10 Bom. H. C. Rep. 375) that an entry of an account stated made by the defendant in the plaintiff's books, was not a contract in writing within the meaning of § 21 of Act IX. of 1871; the terms of the contract must be fully defined in writing to render the proviso to the section applicable; and, therefore, that the payments made by the defendant on account, were not such payment of the principal of the debt due by him as would bar the operation of the Act. HANMANTLAL MOTICHUND *v.* RAMABHAI. *Melvill* and *Kemball*, JJ...**I. L. Rep. 3 Bom. 198, 1879.**

Digitized by Google

LIMITATION—*contd.*

48. —— *Act IX. of* 1871, § 27—*Interruption of Easement.*] "By the terms of § 27 of Act IX. of 1871, nothing is to be deemed an interruption unless the obstruction is submitted to or acquiesced in for one year. In order to negative submission it is not necessary that the party interrupted should have brought an action or suit, or taken any active steps, to remove the obstruction; it is enough if he has communicated to the party causing the obstruction that he does not submit to or acquiesce in it." *Per Innes*, C.J., in SUBBRAMANIYA AYYAR *v.* RAMACHANDRA RAU...**I. L. Rep. 1 Mad. 335, 339, 1877.**

S. C. under **Easement. 3.**

49. —— *Act IX. of* 1871, *Sched. II., Art.* 10—*Pre-emption.*] In 1861, certain property was sold to the defendant conditionally. In 1865, the property was attached in execution of a decree. In 1874, the conditional sale having been foreclosed, the defendant obtained a decree for possession. In February 1875, he obtained mutation of names in respect of the property, in November 1875, arrangements having been made to satisfy his decree, the property was released from attachment. In December 1875 he acknowledged having received possession of the property in execution of the decree of 1874. In November 1876, the plaintiff sued to enforce his right of pre-emption in respect of such property:—

Held, that limitation ran from the date when the defendant obtained such possession of the status of his conditional vendor as entitled him to mutation of names, and to the exercise of the rights of an owner, and that the suit was barred by limitation. The principle laid down in *Jogeshar Singh* v. *Jawahir Singh* (I. L. Rep. 1 All. 311) followed. BIJAI RAM *v.* KALLU. *Turner* and *Oldfield*, JJ.....**I. L. Rep. 1 All. 592, 1878.**

50. —— *Act IX. of* 1871, *Sched. II., Art.* 11—*Infringement of Patent—Suit for an Account of Profits.*] In a suit for an account of profits obtained by an infringement of an exclusive privilege, the period of limitation—the taking of an account being only a mode of ascertaining the amount of damages—is the same as the period of limitation for an action for damages on the same ground, *viz.*, one year from the date of the filing of the plaint, under Act IX. of 1871, Sched. II., Art. 11. KINMOND *v.* JACKSON. *Garth*, C. J., and *Macpherson*, J...**I. L. Rep. 3 Cal. 17; 1 Cal. Rep. 66, 1877.**

LIMITATION—*contd.*

51. ——*Act IX. of* 1871, *Sched. II., Art.* 14—*Suit to set aside a Sale—Purchase of Decree by Joint Debtor.*] *M.* having obtained a decree for mesne profits against the plaintiff and two other persons, sold her rights under the decree to *S.*, who proceeded to execute the decree against the plaintiff's property, and that property was, in 1870, sold in such execution, and purchased by the defendant; but in a suit brought by the plaintiff subsequently to such sale for a declaration that *S.* was not the real purchaser of the decree, but that he, *S.*, purchased the same *benami* for his (the plaintiff's) co-debtors, the Court found that *S.* had in fact purchased the decree for the plaintiff's joint debtors, and therefore that *S.* had no right to execute the same against the plaintiff's property. In a suit brought by the plaintiff, in 1874, against the defendant to recover the property purchased by him:—

Held, that the purchase of the benefit of *M.*'s decree by the plaintiff's joint debtors did not effect the decree itself, though it had the legal effect of satisfying the judgment debt which the decree created. The order, therefore, made by the Court in execution of that decree, and the sale which took place under that order, were both binding on the plaintiff until proper steps were taken to reverse them, and the title of the defendant who purchased under that sale was also a perfectly good title until the sale was set aside. That sale was not void, but only voidable, and whatever might be the frame or language of the plaint in the present suit, its real object and purpose was to avoid or set aside the sale, because that was the only means by which the defendant's title could be defeated, and the plaintiff restored to his right of possession; and inasmuch as the suit was not brought within one year from the date of the sale, it was barred under Act IX. of 1871, Sched. II., Cl. 14. ABUL MUNSOOR *v.* ABDUL HAMID. *Garth*, C.J., and *Mitter*, J.....**I. L. Rep. 2 Cal. 98, 1876.**

52. —— *Act IX. of* 1871, *Sched. II., Art.* 15—*Suit to establish Title to Property ordered to be sold in Execution.*] The plaintiff's property was sold in execution of a decree passed in a suit to which he was not a party. The plaintiff appeared and asked the Court to release the property from attachment, but the Court refused

Digitized by Google

LIMITATION—*contd.*

the application under § 246 of Act VIII. of 1859, and ordered the property to be sold. In a suit brought in 1876, to establish the plaintiff's title to such property:—*Held*, that such suit was not a suit to set aside a summary order within Cl. 15, Sched. II., of Act IX. of 1871. If in any case it is necessary to set aside the summary order, the suit must be framed so as to have that effect, and then that clause would apply; but if the plaintiff can get all the relief he wants without setting aside the summary order then he may get that relief without regard to Cl. 15. So long as a plaintiff does not seek to set aside the summary order he cannot be brought within Cl. 15 of Sched. II. of Act IX. of 1871. KOYLASH CHUNDER PAUL CHOWDHRY *v.* PREONATH ROY CHOWDHRY. *Markby* and *Prinsep*, JJ.....**I. L. Rep. 4 Cal. 610; 3 Cal. Rep. 25, 1878.**

53. —— *Act IX. of* 1871, *Sched. II., Art. 46—Attachment of Lands under Act XXV. of* 1861, *Chap. XXII.—Suit to recover the Lands.*] A dispute having arisen between the plaintiffs and defendant as to the ownership of certain lands, the Magistrate, being informed of the dispute, held an inquiry under Chapter XXII. of the Criminal Procedure Code of 1861 (Act XXV.), and, finding himself unable to "decide who was in actual possession of the lands," attached them under § 319 of that Act, and placed them in charge of the Sub-Magistrate

Held, that this was not an order respecting the "possession of property," but an attachment proceeding recorded because the Magistrate was unable to determine which party was in possession. The limitation of three years prescribed by Art. 46 of Sched II., Act IX. of 1871, was therefore inapplicable to a suit brought more than three years from the date of such order to recover the lands from the defendant, who had obtained possession of them under a decree obtained by him in a suit for a declaration of his right to the lands, which decree was subsequently reversed. AKILANDAMAL *v.* PERIASAMI PILLAI. *Morgan*, C.J., and *Kindersley*, J...**I. L. Rep. 1 Mad. 309, 1877.**

54. —— *Act IX. of* 1871, Sched. II., Art. 60—*Sale in Execution—Right of Attaching Creditor to Sale Proceeds—Money had and received to the Plaintiff's Use.*] On the 12th of March 1867 the plaintiff obtained from one *R.* a bond charging certain immoveable property with the payment of the debt thereby secured. The plaintiff obtained a decree on this bond on the 19th of August 1871, which directed the property to be sold in satisfaction of the charge.

The defendant, who had, on the 22nd of August 1871, obtained a money-decree against *R.*, caused the property to be attached on the 1st of April 1872. The plaintiff subsequently caused the property to be attached in execution of his decree; and the property was sold thereunder on the 20th of July 1872. The defendant claimed the whole of the sale proceeds by virtue of the priority of his attachment. The Court of first instance ordered that plaintiff's decree should first be satisfied out of the sale proceeds, and the balance paid to the defendant; but on appeal, the Judge, on the 7th of November 1872, reversed the order of the Court of first instance, and declared that the defendant was entitled to the whole of the sale proceeds. The defendant then obtained an order directing the plaintiff to refund the money, which was paid to the defendant on the 26th of March 1873. In a suit by the plaintiff to recover the amount from the defendant by establishing his prior right thereto, and for the cancelment of the Judge's order of the 7th of November 1872, alleging that it was made without jurisdiction:—

Held, by *Pearson*, *Turner*, and *Oldfield*, JJ., that in order to determine what period of limitation is applicable to a suit, the nature of the relief sought must be looked to. In the present case, the principal relief sought was the recovery of the money. Although the plaint claimed the cancelment of the Judge's order of the 7th of November 1872, and the declaration of the plaintiff's prior right, those claims were subsidiary to the principal relief sought, and as it was alleged in the plaint that the order impugned was not passed by a competent Court, it was unnecessary for the plaintiff to claim that it should be cancelled, but he was entitled to rely on the order of the Court of first instance as the only valid order, and in virtue of that order to contend that the money was wrongfully taken by the defendant. Looking to the substantial relief sought, the suit must be regarded as a suit for money had and received to the plaintiff's use, to be governed by Article 60, Sched. II.. Act IX. of 1871. If not a suit for money had and received then it fell within Article 118, and in either case was within time.

By *Stuart*, C.J., and *Spankie*, J.—That Article 26 of Sched. II., Act IX. of 1871 did not apply

Digitized by Google

LIMITATION—*contd.*

to the case; nor did Article 15, inasmuch as the order of the Judge of the 7th November 1872 was made without jurisdiction (there being no appeal to him from the order of the Court of first instance), and therefore a nullity. Even if the Judge had jurisdiction, *quære* whether that article would apply, as the plaintiff asked for something more than the nullification of the order; nor did Article 60 apply, as the suit was not one for money received by the defendant to the plaintiff's use, but the suit fell within Article 118, as being one for which no other period of limitation was provided.

Held by *Pearson* and *Spankie*, JJ., that the defendant was not entitled to be first paid out of the sale proceeds by reason of the priority of his attachment. RAM KISHAN *v.* BHAWANI DAS.....**I. L. Rep. 1 All. 333, 1876, F. B.**

55. —— *Act IX. of* 1871, *Sched. II., Art.* 60—*Money obtained by Fraud and Collusion.*] The plaintiff alleged that one *P.* had deposited certain moneys in the Collectorate in the name of the plaintiff, and that the defendant in collusion, and without the knowledge or consent of the plaintiff, took the money from the Collectorate on the 13th January 1869. The suit was filed on the 21st January 1874:—

Held, that the suit was barred under the provisions of Article 60 of Sched. II., Act. IX. of 1871, read as that article ought to be in connection with English law, as being a suit for money received by the defendants for the plaintiff's use. The period of limitation ran from the time when the moneys were received by the defendants, and not from the time of the demand by the plaintiff. RAGUMONY AUDHIKARY *v.* NILMONY SINGH DEO. *Markby* and *Prinsep*, JJ...**I. L. Rep. 2 Cal. 393, 1877.**

56. ——*Act IX. of* 1871, *Sched. II., Art.* 72—*Promissory Note — Demand — Novation.*] The holder of a promissory note payable on demand, dated 14th April 1870, demanded payment on 8th December 1872. The maker then paid interest in advance up to 1st April 1873, on the condition that the holder should make no demand until that date.

Held, that this transaction amounted to the substitution of a new contract for that contained in the note; that the period of limitation must be reckoned from 1st April 1873, and that a suit instituted on 27th March 1876 to recover

LIMITATION—*contd.*

the balance due on the note was not barred. NATHA HIRA *v.* JANARDHAN RAMCHANDRA. *Westropp*, C.J., and *Sargent*, J...**I. L. Rep. 1 Bom. 503, 1876.**

57. —— *Act IX. of* 1871, *Sched. II., Art.* 85—*Attorney and Client—Bill of Costs.*] A solicitor was retained in July 1871 to execute a decree. In November 1871 a prohibitory order was made in the cause, after which the solicitor did nothing more in the matter. In June 1872 the decree-holder and the judgment debtor settled the matters in dispute between them without the knowledge of the solicitor, but this compromise was not made through, or certified to, the Court which passed the decree. In a suit brought in December 1875 by the solicitor against the decree-holder to recover the amount of his bill of costs:—

Held, that the plaintiff's claim was not barred by Article 85, Schedule II. of Act IX. of 1871. HEARN *v.* BAPU NAIKIN. *Westropp*, C.J., and *Sargent*, J.....**I. L. Rep. 1 Bom. 505, 1876.**

58. —— *Act IX. of* 1871, *Sched. II., Art.* 93—*Suit to have a Deed declared a Forgery.*] During the pendency of an appeal to the High Court, in which one *N.* was the plaintiff, and the present plaintiff the defendant, *N.* conveyed by deed, dated 17th July 1864, to the present defendant a part of the property which was the subject matter of the suit. On a subsequent application by the present plaintiff for leave to appeal to the Privy Council, the present defendant, in 1865, applied, on the basis of the conveyance to him by *N.* of 17th July 1864, to have his name put on the record as one of the respondents. In a subsequent suit by the plaintiff to have it declared that the deed of 17th July 1864 was a forgery, brought more than three years after the date of the defendant's application to have his name added as a respondent on the record of the plaintiff's appeal to the Privy Council:—*Held*, that the suit was barred under the Limitation Act IX. of 1871, Sched. II., Art. 93, as the defendant's application in the matter of the appeal to the Privy Council was such an attempt to enforce the deed of the 16th July 1864, as under that article obliged the plaintiff to bring his suit within three years of such attempt. It is not necessary for the purposes of that article that the person who is to benefit by the instrument, should seek to obtain the entire fruits of it; it is enough if, having obtain-

Digitized by Google

LIMITATION—*contd.*

ed the instrument, he seeks to place himself in an advantageous position, which but for the instrument he could not occupy. FAKHAROODEEN MAHOMED AHSAN *v.* POGOSE. *Jackson* and *Tottenham*, JJ...**I. L. Rep. 4 Cal. 209; 2 Cal. Rep. 578, 1878.**

59. —— *Act IX. of* 1871, *Sched. II., Art.* 95—*Suit for Possession—Fraud.*] Article 95 of Schedule II., Act IX. of 1871, does not apply to suits for possession of immoveable property when fraud is merely a part of the machinery by which the defendant has kept the plaintiff out of possession. That article has reference to cases where a party has been fraudulently induced to enter into some transaction, execute some deed, or do some other act, and desires to be relieved from the consequences of those acts. CHUNDER NATH CHOWDHRY *v.* TIRTHANAND THAKOOR. *Jackson* and *Cunningham*, JJ..... **I. L. Rep. 3 Cal. 504; 2 Cal. Rep. 147, 1878.**

60. —— *Act IX. of* 1871, *Sched. II., Art.* 100—*Suit for Contribution.*] *Quære*—Whether in a suit for contribution, on the ground that the plaintiffs and defendants were jointly liable under a decree, in execution of which the plaintiffs' property alone was sold, the limitation prescribed by Art. 100, or that prescribed by Art. 118, of Schedule II., Act IX. of 1871, is applicable.

The cause of action in such a suit arises when the sale proceeds are drawn out of Court by the decree-holder, and not on the date of the auction sale. FUCKORUDEEN MAHOMED AHSAN *v* MOHIMA CHUNDER CHOWDHRY. *Mitter* and *Maclean*, JJ..... **I. L. Rep. 4 Cal. 529, 1878.**

61. —— *Act IX. of* 1871, *Sched. II., Art.* 113—*Specific Performance—Trust—Laches.*] In 1860, certain shares in a company then formed were allotted to *S.*, on the understanding, as the plaintiffs alleged, that 120 of such shares should, on the amount thereof being paid to *S.*, be transferred to, and registered in the books of the company in the names of, the plaintiffs. In 1862 the plaintiffs completed the payment to *S.* in respect of the shares, and during his life-time received dividends in respect of the said shares. *S.* died in 1870, leaving a will, probate of which was granted to the defendant as his executor. In a suit brought by the plaintiffs after demand of the shares from the defendant and refusal by him to deliver them, to compel the defendant to transfer the shares to the plaintiffs and register them in their names, the plaintiffs' case was that the shares had been held in trust for them, and that, consequently, their suit was not barred by lapse of time:—

LIMITATION—*contd.*

Held, that the transaction between *S.* and the plaintiffs did not amount to a "trust for any specific purpose" within the meaning of § 10 of Act IX. of 1871, or to a trust at all, but to an agreement of which the plaintiffs were entitled to specific performance; and the limitation applicable was that provided by Act IX. of 1871, Sched. II., Art. 113, and the suit, therefore, was not barred. Nor were the plaintiffs disentitled to relief by reasons of any laches or delay in bringing the suit. AHMED MAHOMED PATTEL *v.* ADJEIN DOOPLY. *Garth*, C.J., and *Mitter*, J... **I. L. Rep. 2 Cal. 323, 1876.**

62. ——*Act IX. of* 1871, *Sched II., Art.* 121—*Decree against a Sirdar—Execution against his Heir, who is not a Sirdar—Decree directing Gradual Payments—Limitation—Suit on a Judgment.*] In 1848, the plaintiff's father obtained in the Court of the Agent for Sirdars a decree against the defendant's grandfather, a Sirdar of the third class. The decree directed that the amount awarded might be paid up at once, or realized year by year by appropriation of the Sirdar's share in the village of Wada. The execution proceeded on the footing of the latter alternative, and the Sirdar paid his share regularly till his death in 1862. His son, who succeeded him, also paid in the share to the plaintiff till his death in 1867.

The defendant, the grandson of the judgment-debtor, was not a Sirdar, and the Agent, therefore, had no jurisdiction over him, but the execution proceeded on the same footing as before, through the Subordinate Court of Khed, till 1876, when the District Judge pronounced all the proceedings taken since 1867 to be irregular. In 1877, the plaintiff filed the present suit, based on the decree of 1848:—

Held, that Art. 121 of Sched. II. of Act IX. of 1871, which prescribes to a suit on a judgment a limitation of twelve years from the date of the judgment sued on, applied; but that the decree must be treated as analogous to a decree payable by instalments, and be held as one made, because then first operative, in 1867, as to all future proceeds of the village. In the case of a decree payable by instalments, as the command of the Judge prescribes a term for the performance of the several parts of his order, it is to be con-

Digitized by Google

LIMITATION—*contd.*

strued as becoming a judgment for purposes of limitation, as to each instalment, only on the day when the payment is to be made. SAKHARAM DIKSHIT *v.* GANESH SATHE. *West* and *Pinhey*, JJ .....**I. L. Rep. 3 Bom. 193, 1879.**

63. —— *Act IX. of* 1871, *Sched. II., Art.* 122—*Will—Residuary Estate of Moveable and Immoveable Property.*] "Apart from authority, I should have had considerable doubt as to whether the word 'legacy,' even in Cl. 122 of the Indian Limitation Act, applied to a share of residue, the words 'distributive share' in that clause presumably applying to undisposed-of estate only. But in *Prior* v. *Horniblow* (2 Y. & C. Ex. Rep. 200) Baron Alderson unhesitatingly decided that the word 'legacy' in 3 and 4 Wm. IV., C. 27, § 40, included a share of residue. This seems to have been rather a forced construction, for two reasons — first, because a share of residue is not, like a legacy, a liquidated amount, but may depend on long and complicated accounts; and, secondly, because the English statute clearly does not provide for the analogous case of a demand by next of kin for a distributive share against an administrator." Then, after noticing the remarks of V.-C. Knight Bruce in *Adams* v. *Barry* (2 Collyer 285, p. 293) on *Prior* v. *Horniblow*, his Lordship proceeded:—"But *Prior* v. *Horniblow* has never been overruled, and in fact it may be said to have obtained legislative sanction, inasmuch as by § 13 of 23 and 24 Vict., C. 38, claims of next of kin against administrators are barred in the same way as legatees under the former statute. I am bound, therefore, to hold that Cl. 122 of Sched. II. of Act IX. of 1871, which applies not only to a legacy, but, also to a distributive share of the immoveable property of a testator or intestate, includes a share of the residue of a testator's moveable property. Cl. 122, however, applies only to moveable property. TREEPOORASOONDER DOSSEE *v.* DEBENDRONATH TAGORE. *Pontifex*, J...**I. L. Rep. 2 Cal. 45, 1876.**

S. C. under **Certificate to collect Debts. 2.**

64. —— *Act IX. of* 1871, *Sched. II., Art.* 123 — *Suit for Dharmakartaship of Pagoda — Account.*] *M.*, the founder of two pagodas, died in 1795, leaving six sons, of whom *C.* and *T.* were two. *T.*, the younger, died in 1834, leaving two sons, one of whom, *A.*, who died in 1853, was the father of the plaintiff. *C.* died in

LIMITATION—*contd.*

1816, leaving two sons, *M.*, who died in 1840, and L., who died in 1847, and two daughters, *A.* and *R.*, the defendant's mother. The office of *dharmakarta* descended from *M.* to *C.*, after whose death in 1816 a manager was appointed by the Collector, and *C.*'s son *M.* was dispossesed by his uncle *T.*, and in 1834 *M.* brought a suit in equity against *T.* and his sons. Pending a reference to the Master, the Supreme Court made an order to the effect that *M.* was to exercise the functions of a dharmakarta subject to his accounting under the final decree. That final decree was never passed, and the suit abated on the death of *M.* in 1840. *M.* was succeeded in the office of dharmakarta by his brother *L.*, who held it till 1847, when he died leaving it by will to his sister *A.* and her husband *R.* jointly. *R.* died soon afterwards, and *A.* died in 1872, leaving the office by her will to her sister's son, the defendant.

The plaintiff, as eldest surviving male member of the founder of *M.*'s family, claimed the office of dharmakarta, and prayed that if he was not entitled to the office, some proper person might be appointed to it, and that an account might be taken of the pagoda property, and also against the defendant as executor of *A.* of whatever might be due by her estate to the pagodas :—

Held, that the act of *L.* leaving by his will this hereditary office to *A.* and her husband, a stranger to the family of the founder, was an act of a character unequivocally hostile, and as the will was acted upon at once by the devisees, the survivors of *T.*'s branch, including the plaintiff, must have had full notice that exclusive possession had been taken of the office to the prejudice of their rights, and that *A.*'s holding up to her death was a holding hostile to the rights of the male survivors, and the suit, therefore, against the defendant, who claimed through *A.*, was barred by Act IX. of 1871, Sched. II., Art. 123.

Held, also, that as § 29 of that Act absolutely extinguishes the right after the determination of the period limited for instituting a suit of this kind, and as long before *A.*'s death the plaintiff's right must have been absolutely extinguished, he could not set up a fresh right as accruing to him as the only male survivor of the founder's family on *A.*'s death.

Held, also, that the plaintiff, having no longer any title to the property, was not in a position

Digitized by Google

LIMITATION—*contd.*

to treat the defendant as a trespasser, and call on him for an account of the past administration on that footing; and the suit being substantially a suit to remove the defendant from the trust, and to establish the plaintiff's title to the hereditary office, or (on failure of plaintiff to establish the title) to secure the appointment of a fit and proper person to fill the defendant's office, and the account being prayed for only on that understanding, the plaintiff was not entitled to call for an account of the past administration of the trust, as a person interested in the religious trust. MANALLAY CHENNA KESAVARAYA *v.* VAIDELINGA. *Innes* and *Busteed*, JJ...**I. L. Rep. 1 Mad. 343, 1877.**

65. —— *Act IX. of* 1871, *Sched. II., Art.* 127 —*Suit by Hindu excluded from Joint Family Property.*] In a suit by a Hindu excluded from joint family property, to enforce a right to share therein, brought before the 1st October 1877, the period of limitation must be computed, under Art. 127, Sched. II., Act IX. of 1871, and not under Art. 143; *i. e.*, from the date when the plaintiff *claimed and was refused* a share, and not from the date of exclusion. KALI KISHORE ROY *v.* DHUNUNJOY ROY. *Garth*, C. J., and *Birch*, J.....**I. L. Rep. 3 Cal. 228, 1877.**

S. C. under **Appeal—Civil. 6.**

66. ——*Act IX. of* 1871, *Sched. II., Art.* 129 —*Adoption.*] In a suit brought by the plaintiff to recover possession of certain property, to which he alleged that he was entitled as joint heir with his deceased brother *D.*, against the defendants, claiming under the widow of the said *D.*, it appeared that the widow had, in 1851, executed a *putnee* lease in favour of one *R. S.*, but without any justifying necessity for borrowing the sum of money for which it was granted, and that she had executed, in 1860, a deed of adoption by which she professed to adopt the defendants in pursuance of the permission of her husband, and to make over to them her property. But the gift was not to take effect till her death, possession being retained by her during her lifetime. It was admitted by the defendants that this document could not be seriously treated as an attempt on the part of the widow to adopt heirs to her husband, but was merely an adoption of heirs to herself, and in fact a disposition of her property, very much in the nature of a will, to them after her death. Part of the plaintiff's claim was that the above *putnee* lease be set aside, and the deed of adoption cancelled.

LIMITATION—*contd.*

Held, that the widow having no more than a Hindu widow's estate, the *putnee* could only bind her life interest, and as to the latter part of the claim, a question having been raised concerning the Limitation Act IX. of 1871, Sched. II., Art. 129, whereby it is enacted that with respect to a suit to establish or set aside an adoption, the time when the period of limitation begins to run is the "date of the adoption, or (at the option of the plaintiff) the date of the death of the adoptive father":—*Held*, that on the above view of the document, the provisions of the statute would scarcely seem applicable to it; but that the provisions in the Limitation Act relating to adoption, though it might bar a suit brought only for the purpose of setting aside the adoption, does not interfere with the right which, but for it, a plaintiff has of bringing a suit to recover possession of real property within twelve years from the time when the right accrued, and that their Lordships regarded as the nature of this suit. RAJ BAHADOOR SINGH *v.* ACHUMBIT LAL. **L. Rep. 6 I. A. 110; 6 Cal. Rep. 12, 1879.**

67. —— *Act IX. of* 1871, *Sched. II., Art.* 157—*Execution of* Ex-parte *Decree.*] Notice of execution of decree is not sufficient "process for enforcing" it within the meaning of Art. 157 Sched. II. of Act IX. of 1871. Such process means actual process by attachment in execution of the person or property of the debtor. *Obhoychurn Dutt* v. *Mudoosudan Chowdhry* (5 Wym. 172) not followed. PROSONNO CHUNDER COONDOO *v.* PROSONNO COOMAR SIKDAR. *Pontifex*, J.....**I. L. Rep. 2 Cal. 123, 1876.**

68. —— *Act IX. of* 1871, *Sched. II., Art.* 158—*Application for Restitution by person dispossessed.*] In calculating the period of limitation prescribed in Sched. II. of Act IX. of 1871, for applications as well as for suits and appeals, the day on which the order or decree appealed against was made should be excluded.

Therefore, where a person having been dispossessed of property held by him under a mortgage on the 14th December 1875, applied on the 14th January 1876 for the restitution, the 13th having been a Court holiday, it was held that his application was within the limitation of thirty days prescribed by Act IX. of 1871, Sched. II., Art. 158. GUJAR *v.* BARVE. *West* and *Pinhey*, JJ...**I. L. Rep. 2 Bom. 673, 1878.**

Digitized by Google

LIMITATION—*contd.*

69. —— *Act IX. of* 1871, *Sched. II., Art.* 166.] Limitation Acts, being restrictive of the ordinary right to take proceedings, must, where their language is ambiguous, be construed strictly, *i. e.*, in favour of the right to proceed.

A. as purchaser of a decree against *B.* applied for execution thereof, and having caused five fields of *B.* to be sold in execution, purchased four of them at the Court sale, and one from an execution purchaser. On the 10th July 1871, the High Court, in a Miscellaneous Special Appeal by *B.*, held *A.*'s application for execution to have been time-barred, and reversed the orders of the lower Courts. *A.* having been put in possession of the fields under the order of the lower Courts, *B.*, on the reversal of those orders by the High Court, applied, on the 9th July 1874, to have the fields restored to him, together with mesne profits accruing during the time of his dispossession. The first Court awarded the fields to *B.* with mesne profits; but the District Judge, on appeal, held *B.*'s application barred by Act IX. of 1871, Sched. II., No. 166.

Held, that the exception in that number is not restricted to any particular species of appeal; that *B.*'s application fell within No. 167, and not within No. 166 of the Limitation Act of 1871, and was, therefore, not barred. UMIASHANKAR LAKHMIRAM *v.* CHOTALAL VAJERAM. *Westropp*, C.J., and *Kemball*, J...**I. L. Rep. 1 Bom. 19, 1875.**

70. —— *Act IX. of* 1871, *Sched. II., Art.* 167—*Execution of Decree—Application.*] An application was made in February 1868 to the Subordinate Judge by the plaintiffs, for execution of a decree (payable by instalments), obtained by them against the defendants in August 1867, by attachment of certain property in the Collector's hands, to which one of the defendants was entitled; and a notice was issued to the Collector under § 237 of Act VIII. of 1859, in accordance with an order indorsed on the application. A long correspondence ensued between the Collector and the Subordinate Judge, which resulted in the Collector paying, out of the moneys in his hands, the principal sum, and a portion of the moneys claimed by the plaintiffs, on the 10th September 1872. Meantime, and while the correspondence was going on, the plaintiffs, on 30th September 1871 presented an informal application to the Subordinate Judge, praying him to overrule the Collector's objections and enforce execution of their decree, but no order was passed on it.

On the 19th October 1872, the plaintiffs presented a fresh application for enforcement of their decree in respect of the recovery of the interest that had accrued on it since the date of the application of February 1868.

Held, that though proceedings sufficient apparently to bar limitation under Act XIV. of 1859 were going on, under the application of February 1868, down to the 30th September 1871, yet the application made on that day was not one which could bar limitation under Act IX. of 1871, being merely a request or suggestion that the Collector should be directed to carry out a direction sent to him in 1868 in a particular way; but that even if it had been an application which in itself could serve as a bar to limitation, it was then already too late on the day when it was made, which was more than three years after February 1868, the last prior application for execution.

Held also, that though interest was awarded by the decree, it was not intended by Act IX. of 1871 to keep a decree perpetually in force without renewed applications, and therefore that the present application was barred. JIBHAI MAHIPATI *v.* PARBHU BAPU. *West* and *N. Harridas*, JJ.....**I. L. Rep. 1 Bom. 59, 1875.**

71. —— *Act IX. of* 1871, *Sched. II., Art.* 167—*Decree payable by Instalments.*] A decree payable by instalments with a proviso that the whole amount of the decree shall become payable at once in default of the payment of any instalment, is barred if application for execution be not made within three years from the date on which any one instalment became due and was not paid.

The payment of instalments subsequent to default in payment of the first instalment on the date specified, does not give the judgment-creditor a fresh starting-point. DULSOOK RATTANCHAND *v.* CHUGON NARRUN. *Westropp*, C. J., and *Melvill*, J...**I. L. Rep. 2 Bom. 356, 1877.**

71a.—— *Act IX. of* 1871, *Sched. II., Art.* 167—*Execution of Decree payable by Instalments.*] Under the terms of a decree dated the 6th April 1866, payable by instalments, all payments were to be endorsed on the decree, and if the judgment-debtor failed to pay two instalments in succession, the decree-holder was empowered to enforce payment of the whole amount

Digitized by Google

LIMITATION—*contd.*

due under the decree. The decree-holder, alleging that he had received all but Rs. 100, being a portion of the instalment for 1875, and Rs. 250, the whole of the instalment for 1876, applied on the 17th July 1877 to recover Rs. 350 by execution of the decree. It appeared that the payments which had been made under the decree, had been endorsed on the copy of the decree in the decree-holder's possession. The judgment-debtors contended that those payments, having been made out of Court, could not be recognized, and that it must be therefore taken that there had been default in payment of the first two instalments, and that, the decree-holder not having applied for execution within three years from the time when those instalments fell due, the present application was barred :—

Held, by *Pearson*, J., that the above contention was quite untenable. The decree-holder's omission in 1869 and 1870 to avail himself of his right to realize at once the entire amount of the judgment debt might possibly preclude him from now enforcing that right, but by foregoing or forfeiting that right he had not lost his right to the instalments annually falling due. It was immaterial whether former instalments had been paid or not, and the non-recognition of those payments did not exclude the present application from the operation of Art. 167, Sched. II., Act IX. of 1871, and it was therefore in time.

Spankie, J., on the facts found by the lower Court, that there had been no such default as that referred to in the decree in the payment of instalments, refused to interfere with the judgment of that Court that the application was in time. KANCHAN SINGH *v.* SHEO PRASAD...**I. L. Rep. 2 All. 292, 1879.**

72. —— *Execution of Decree payable by Instalments, Whole to fall due on any one Default—Acknowledgment.*] Where a decree was made payable by instalments with a proviso that in the event of default in payment of any instalment, the decree should be executed for the whole amount :—

Held, that the decree-holder was strictly bound by the terms of the decree, and not having applied for execution of the whole decree within three years from the date of the first default, execution of the decree was barred.

Held also, the judgment debtor having more than three years after the first default acknowledged, in writing under his signature, his liability under the decree, that, the decree being already barred, such acknowledgment did not create a new period of limitation. SHIB DAT *v.* KALKA PRASAD. *Spankie* and *Straight*, JJ...**I. L. Rep. 2 All. 443, 1879.**

73. —— *Act IX. of* 1871, *Sched. II., Art.* 167—*Execution of Decree—Reversal of Sale of Land sold in Execution of Decree, Effect of.*] *A.* obtained a decree against *B.* on the 21st June 1871, and applied for execution on the 10th July following. On the 2nd October of the same year property attached under such execution was sold, and the sale proceeds being paid over to *A.*, the execution proceedings were struck off the file on the 28th July 1872. On the 14th May 1873, *B.* obtained an order setting aside the sale, and for a refund of the sale proceeds. *A.* thereupon, on the 22nd December 1874, again applied for the execution of his decree.

Held, that such application was in substance simply an application to the Court to continue the proceedings already commenced by the application of July 1871, and that it did not, therefore, come within the provisions of Art. 167, Sched. II., Act IX. of 1871, and was not barred. ISSUREE DASSEE *v.* ABDOOL KHALAK. *Mitter* and *Maclean*, JJ...**I. L. Rep. 4 Cal. 415; 3 Cal. Rep. 46, 1878.**

74. —— *Act IX. of* 1871, *Sched. II., Art.* 167—*Execution of Decree—Proceeding to enforce.*] The plaintiff sued the defendant on a bond hypothecating a ten-*biswa* share of a certain village, and on the 23rd of March 1871 obtained a decree. The 21st of August 1871 was, on an application made on the 10th of June 1871, fixed for the auction sale of the property, but on the objection of *D.* the property was released from attachment on the 16th of August 1871, on the ground that *D.* had already purchased the property at a sale in execution of another decree. The plaintiff then sued *D.* to bring to auction sale a seven-*biswa* share out of the ten-*biswa* share purchased by *D.*, and on the 10th of August 1872 obtained a decree. On the 25th March 1875 the plaintiff applied for execution of the decree of the 23rd of March 1871 against the defendant. The application recited the whole previous proceedings, and simply repeated the prayer for execution of the decree which was made on the 10th of June 1871 :—

Digitized by Google

LIMITATION—*contd.*

Held, by the majority of the Full Bench, that the execution of the decree was not barred. The application of the 25th of March 1875 was not a new or fresh act, but was in legal continuance of the application of June 1871 to carry out the order, which as against the defendant had become final, and of which the prosecution was interrupted by the illegal intervention of *D.* and the allowance of his objection since disallowed.

Per Pearson, J.—The application of the 25th of March 1875 might be regarded as an application to proceed with the former application of the 10th of June 1871, the proceedings under which were interrupted by *D.*'s intervention, but if so regarded, it was still in substance and effect an application for the execution of the decree of the 23rd March 1871, and Art. 167, Sched. II., Act IX. of 1871 applied, and required that it should have been presented within three years from the date of the former application, and it was therefore barred. PARAS RAM *v.* GARDNER.....**I. L. Rep. 1 All. 355, 1877.**

75. —— *Act IX. of* 1871, *Sched. II., Art.* 167—*Joint Decree—Application for Partial Execution.*] An application for the partial execution of a joint decree is not an application according to law, and has not the effect of keeping the decree alive for the whole body of joint decree-holders.

Therefore, where a decree of the Sudder Court, dated the 31st of March 1864, gave costs in the Court of first instance to certain of the defendants, among whom was one *A.*, separately, and to eight sets of defendants collectively, and costs in the Sudder Court to three sets of defendants; and the only applications for execution of this decree were in 1871 by *A.* alone, to recover his costs in the Court of first instance, and a fractional share of the costs in the Sudder Court awarded to his set of defendants:—*Held*, that an application for execution of the Sudder Court's decree made by all the defendants on the 20th of May 1875 was barred. RAM AUTAR *v.* AJUDHIA SINGH. *Stuart*, C.J., and *Pearson*, J.....**I. L. Rep. 1 All. 231, 1876.**

76. —— *Act IX. of* 1871, *Sched. II., Art.* 167 — *Execution of Decree — Final Decree of Appellate Court.*] In a suit for possession of land and for mesne profits, the Court of first instance gave the plaintiff a decree for possession, but dismissed the claim for mesne profits. On appeal, the Judge confirmed the decree for possession, and remanded the case under § 351 of Act VIII. of 1859, to determine the amount of mesne profits due to the plaintiff. The Court of first instance gave the plaintiff a decree for a certain amount of mesne profits. Subsequently a special appeal was preferred to the High Court against the Judge's decree. Pending this appeal, an appeal was presented to the Judge from the decree of the Court of first instance for mesne profits, and on the 7th of June 1873 the plaintiff again obtained a decree for mesne profits. Finally, on the 6th March 1874, the High Court modified the Judge's decree for possession, but did not interfere with the order of remand:—

Held, on the plaintiff's applying for execution of the Judge's decree of the 7th June 1873, that the limitation ran from the date of the final decree of the High Court, which was "the final decree of the Appellate Court," and the only "final decree" within the meaning of Act IX. of 1871, Sched. II., Art 167. IMAM ALI *v.* DASAUNDHI RAM. *Stuart*, C.J., and *Oldfield*, J...**I. L. Rep. 1 All. 508, 1877.**

77. —— *Act IX. of* 1871, *Sched. II., Art.* 167—*Application to enforce or keep in force the Decree—Act VIII. of* 1859, § 285.] *Held*, that an application under § 285 of Act VIII. of 1859, being a necessary and decided step towards the execution of a decree, was an application to enforce or keep in force the decree within the meaning of Act IX. of 1871, Sched. II., Art. 167. HUSAIN BAKSH *v.* MADGE...**I. L. Rep. 1 All. 525.**

78. —— *Act IX. of* 1871, *Sched. II., Art.* 167—*Execution of Decree—Application to enforce or keep in force a Decree.*] *Held* by the Full Bench, that the date on which an application for the execution of a decree is presented, and not any date on which such application may be pending, is the "date of applying" within the meaning of Art. 167, Sched. II. of Act IX. of 1871.

Held by the Division Bench (*Stuart*, C.J., and *Turner*, J.), that an application by a decree-holder for the stay of execution proceedings is not an application to enforce or keep in force the decree, within the meaning of the same law. FAKIR MUHAMMAD *v.* GHULAM HUSAIN...**I. L. Rep. 1 All. 580, 1878.**

Digitized by Google

LIMITATION—*contd.*

79. —— *Act IX. of* 1871, *Sched. II., Art.* 167—*Execution of Decree on Specially Registered Bond—Act XX. of* 1866, §§ 52, 53.] *Held* that Art. 167, and not Art. 166, of Sched. II., Act IX. of 1871, applies to an application for the execution of a decree made under the provisions of § 53 of Act XX. of 1866 on a bond specially registered under the provisions of § 52 of that Act. JAI SHANKAR *v.* TETLEY...**I. L. Rep. 1 All. 586, F. B., 1878.**

80. —— *Act IX. of* 1871—*Sched. II., Art.* 167—*Execution of Decree—Application to enforce or keep in force a Decree—Act VIII. of* 1859, §§ 212, 216.] On the 3rd of March 1875 a decree-holder applied for the execution of his decree, the application containing in a tabular form the particulars required by § 212 of Act VIII. of 1859, with the exception of the mode in which the assistance of the Court was required, *viz.*, whether by the arrest and imprisonment of the judgment debtors or the attachment of their property. The application prayed that notices might be issued to the judgment debtors under § 216 of Act VIII. of 1859. On the 20th of March 1875 the Court ordered notices to issue, and notices were issued on the 28th of March 1875. On the 27th of April 1875 the execution case was struck off the file, on the ground that the execution creditor did not wish to take further proceedings. On the 30th of April 1877 the decree-holder applied for execution of the decree by the arrest and imprisonment of one of the judgment debtors:—

Held, by *Pearson* and *Oldfield*, JJ.,—1st, that the date of the notices issued under § 216 of Act VIII. of 1859 gave a period from which the limitation would run, although the application on which they were issued may have been not strictly in the form required by § 212 of Act VIII. of 1859.

Held also, that the application for the issue of notices under § 216 of Act VIII. of 1859, though not an application on which such notices could properly issue, because informal, was still an application to keep in force the decree within the meaning of Art. 167 of Sched. II., Act. IX. of 1871. All that the law requires is that there should have been an application with the object of enforcing or keeping in force the decree. If the application is such as to show that it was made with that object, though informal, it will be an application within the meaning of the law of limitation. *Franks* v. *Nuneh Mal* (H. C. Rep., N. W. P. 1875, p. 79,) dissented from.

LIMITATION—*contd.*

Held by *Spankie*, J., *contra.*—Where no application for execution has been made within three years from the date of the decree, the decree-holder cannot fall back on the notice issued under § 216 of Act VIII. of 1859. If the application under § 212 of that Act were bad, the Court had no power to issue the notice, the mere issue of which could not be regarded as giving the decree-holder a fresh period of limitation. BEHARI LAL *v.* SALIK RAM...**I. L. Rep. 1 All. 675, 1878.**

81. —— *Act IX. of* 1871, *Sched. II., Art.* 167 — *Execution of Decree passed before Act IX. of* 1871 *came into force.*] In 1875 the decree-holder sought to execute a decree in a suit instituted before Act IX. of 1871 came into operation, the last application for execution having been made more than three years before the present application;—

Held, that in all matters of substantive law, the law of limitation in force at the period of the arising of the right governs. In all cases of adjective law, the law of limitation in force at the period of enforcement govern execution in a proceeding to enforce a decree of a Court, and comes under the head of purely adjective law. Therefore the law prevailing at the time of the application, *viz.*, Act IX. of 1871, governed the case, and the proceeding was barred. PASUPATI LATCHMIA *v.* PASUPATI MUSAMBHATTU... *Holloway* and *Kindersley*, JJ.....**I. L. Rep. 1 Mad. 52, 1876.**

82. —— *Act IX. of* 1871, *Sched. II., Art.* 167 — "*Suit*"—*Application for Execution of Decree.*] *Per Garth*, C.J., *Markby* and *Ainslie*, JJ. (*Kemp* and *Macpherson*, JJ., not concurring.)—The periods of limitation prescribed in Sched. II. of Act IX. of 1871 are to be computed subject to the provisions contained in the body of the Act, and must be read together with it for all purposes of construction.

It was obviously the intention of the Legislature to give a decree-holder three years, and not less than three years, from the time of his former application for the execution of his decree, for the purpose of making a fresh one. And the only way of carrying out that intention, and putting a reasonable construction on the Act, is by excluding the day on which the

Digitized by Google

LIMITATION—*contd.*

former application was made from the computation of the three years.

An application, therefore, made on the 8th January 1875, to execute a decree, the last application preceding having been made on 8th January 1872, was held to be within the time allowed by Art. 167, Sched. II., Act IX. of 1871.

Per Curiam.—The word "suits" in Act IX. of 1871 does not include "applications" or "appeals." DHONESSUR KOOER *v.* ROY GOODER SAHOY...**I. L. Rep. 2 Cal. 336, 1877, F.B.**

83. —— *Act IX. of* 1871, *Sched. II., Art.* 167—"*Applying to enforce a Decree*"—"*Application*" *to keep the Decree in force—Act VIII. of* 1859, § 212.] "Applying to enforce a decree" in Art. 167 of Sched. II., Act IX. of 1871, means the application (under § 212 of Act VIII. of 1859 or otherwise) by which proceedings in execution are commenced, and not applications of an incidental kind made during the pendency of the proceedings.

In cases governed by Act IX. of 1871, a decree-holder who has applied to the Court *simpliciter* "to keep the decree in force" may, within three years from the date of such last named application, obtain execution of his decree. CHUNDER COOMAR ROY *v.* BHAGOBUTTY PROSONNO ROY...**I. L. Rep. 3 Cal. 235; 1 Cal. Rep. 23, 1877, F.B.**

84. —— *Act IX. of* 1871, *Sched, II., Art.* 167—*Execution of Decree—Application for.*] On the presentation of the last of a series of applications for the execution of a decree, the Court is competent to consider the question whether on the date of making a prior application for execution, the decree sought to be enforced was barred by limitation, and that notwithstanding the fact that notice of such prior application had been served on the judgment-debtor under § 216 of Act VIII. of 1859.

The time prescribed by the Limitation Act IX. of 1871 within which applications for execution of decrees may be made, governed all such applications made during the time that Act was in force.

Bemul Doss v. *Ikbal Narain* (25 W. Rep. 249) followed. UNNODA PERSAD ROY *v.* SHEIKH KOORPAN ALLY. *Kemp* and *Morris*, JJ ..**I. L. Rep. 3 Cal. 518; 1 Cal. Rep. 408, 1878.**

LIMITATION—*contd.*

85. —— *Act IX. of* 1871, *Sched. II., Art.* 167—*Execution of Decree—Application to enforce or keep in force.*] The plaintiff having obtained a decree on the 1st August 1864 against the defendant, applied for execution thereof on the 2nd of January 1869. On the 22nd of November 1870, the plaintiff made a second application to sell the defendant's right, title, and interest in certain specified lands, but on the intervention of third parties those lands were released from attachment. On the 6th 30 December 1871 the plaintiff sued for, and on the 2nd of April 1872 obtained, a declaration of the right of his judgment-debtor, the defendant, to the lands attached. On the 6th of September 1873, more than three years after the date of his first application for execution, the plaintiff applied for execution of the decree, against certain property of the defendant *other than the property* the subject of the regular suit. The application contained no reference to the properties which were the subject of the regular suit, and the only paper filed with the application was the original decree of the 1st of August 1864, and the subsequent orders of the Judge and High Court confirming that decree:—

Held, that the application was barred by limitation. The application of the 22nd of November 1870 was not an application "to keep in force" the decree within the meaning of Art. 167, Sched. II. of Act IX. of 1871, but being an application for sale of properties already under attachment, under an order issued on the application of the 2nd of January 1869, it was an application to enforce the decree, and not one merely to keep the decree alive in the sense intended by the decision in *Chunder Coomar Roy* v. *Bhuggobutty Prosonno Roy* (I. L. Rep. 3 Cal. 235; S. C. 1 Cal. L. Rep. 23). And the application of the 6th September 1873 could not be treated as an application to revive and continue proceedings instituted on the previous application of the 2nd of January 1869. RAM SOONDER SANDYAL *v.* GOPESSUR MOSTOFEE. *Kemp* and *Morris*, JJ...**I. L. Rep. 3 Cal. 716; 2 Cal. Rep. 220, 1878.**

86. —— *Act IX. of* 1871, *Sched. II., Art.* 167—*Execution of Decree—Partial Satisfaction under Arrangement made by Court—Subsequent Application for Execution.*] The mere striking a case off the execution file is not conclusive upon the question whether the execution proceedings were then abandoned or brought to an end.

Digitized by Google

LIMITATION—*contd.*

The Court must look at all the circumstances of the case, and consider whether the execution proceedings were really brought to an end. This question is in a great measure, if not entirely, one of fact.

A., a judgment-debtor, being arrested in execution of a decree, applied in 1873 for his discharge under § 273 of Act VIII. of 1859, and the Subordinate Judge made the following order thereon:—"Applicant must pay Rs. 10 per month, or else be sent to jail. This arrangement is certainly subject to be modified on a material change in the petitioner's circumstances." The judgment-debtor agreed to pay Rs. 10 per month accordingly, and the execution proceedings were struck off the file in September 1873. The judgment-debtor regularly paid the Rs. 10 per month up to October 1876, when he discontinued payment, and the judgment-creditor thereupon, in July 1877, applied for a warrant to arrest him. The District Judge, in appeal, found as a fact that the execution proceedings closed in September 1873, when the execution proceedings were struck off the file, and held that the application for execution was barred by limitation:—

Held, that as the decree-holder was not seeking to enforce by means of execution the new arrangement made in 1873 for the satisfaction of the decree by monthly instalments, but was seeking to enforce his original decree, the application was barred by Art. 167, Sched. II., Act IX. of 1871, more than three years having elapsed since the date of the last application to enforce or keep in force the decree, the present proceeding not being, as contended by the execution creditor, a continuation of the old proceedings in execution, which, though struck off the file, were really only in suspense, for the finding of the District Judge that the execution proceedings closed when the case was struck off the file, was binding on the Court on special appeal; the only ground on which the High Court, as a Court of special appeal, could say he was wrong in coming to that conclusion being, that he had misunderstood the nature of the arrangement then entered into, which the Court was not prepared to do. HURRONATH BHUNJO *v.* CHUNNI LALL GHOSE. *Markby* and *Prinsep*, JJ. ... **I. L. Rep. 4 Cal. 877; 3 Cal. Rep. 161, 1878.**

87. —— *Act IX. of* 1871, *Sched. II., Art.* 167—*Execution of Decree*—Ex-parte *Decree*—

LIMITATION—*contd.*

Appeal.] An application made by a defendant to set aside an *ex-parte* decree made on the 2nd December 1874 was rejected, and, on appeal, the order of rejection was, on the 17th April 1875, affirmed. On the 12th April 1878, the decree-holder applied for execution of the decree:—

Held, that the words "where there has been an appeal" in the first two clauses of Art. 167, Sched. II. of Act IX. of 1871 contemplate and mean an appeal from the decree, and no other appeal, and therefore that execution of the decree was barred. SHEO PRASAD *v.* ANRUDH SINGH. *Pearson* and *Spankie*, JJ. ... **I. L. Rep. 2 All. 273, 1879.**

88. —— *Act IX. of* 1871, *Sched. II., Art.* 167, Cl. 4—*Application to "keep in force" Decree or Order.*] The "application" spoken of in Cl. 4 of Art. 167 of Sched. II., Act IX. of 1871, is not merely such an application as is contemplated by § 212 of Act VIII. of 1859, but includes an application to keep in force decrees or orders.

The language of Art. 167, Cl. 4, of Sched. II., Act IX. of 1871 is wide enough to include any application to enforce or keep in force decrees or orders, and therefore an application to enforce or keep in force a decree by attachment of a portion of the property of the defendants will keep the decree alive against the rest of their property, or against their persons. An order for the attachment of a pension, in satisfaction of a decree obtained on 10th December 1863, was made on 16th April 1869. After the passing of the Pensions Act (XXIII. of 1871), the Deputy Collector refused to continue paying the pension to the decree-holder, and returned to the Court the warrant of execution issued under the order of 16th April 1869, and an order finally disposing of the application for attachment was made on 14th June 1872. On 19th June 1872 the decree-holder presented a fresh application, praying that the attachment of the pension might be continued, and a letter be written to the Collector directing him to continue to pay the pension to the decree-holder, as directed by the order of 16th April 1869.

Held, that such last mentioned application came within Cl. 4 of Art. 167, Sched. II. of Act IX. of 1871, and that, consequently, an application on 24th July 1874, for execution of the decree of 10th December 1863, was not barred.

Held also, that the decree might properly be enforced against property of the defendant,

Digitized by Google

LIMITATION—*contd.*

mentioned in the application of 1874, other than the property mentioned in the applications of 1869 and 1872. JAMNADAS *v.* LALITRAM. *Westropp*, C J., and *Melvill*, J...**I. L. Rep. 2 Bom. 294, 1877.**

89. —— *Act IX. of* 1871, *Sched. II., Art* 167, para. 5—*Execution of Decree—Limitation.*] An application for execution of a decree was made on 10th November 1869, and on 27th November 1869 notice issued under § 216 of the Civil Procedure Code, Act VIII. of 1859. On 17th February 1870 an application was made for a warrant of attachment, and a warrant was issued on 19th May 1870. On the 17th February 1871 an order was made striking the warrant off the file. Again on the 4th February 1873 application was made for execution, and notice was issued on 19th February 1873 under § 216 of Act VIII. of 1859. A subsequent application for execution was made on the 31st August 1874, and the order for notice to issue under § 216 of Act VIII. of 1859 was made on the same day. The question raised in appeal was whether the plaintiff's right to execution was barred by limitation, and was so when the application of 31st August 1874 for execution was made.

Held, that Act IX. of 1871, Sched. II., Art. 167, para. 5, applied, and that the application for execution on 4th February 1873, being more than three years after the date of the issuing the last prior notice under § 216 of Act VIII. of 1859, *viz.*, 27th November 1869, was late, and that execution was barred by limitation at and before the date of that application, and that this bar was not removed by the circumstance that the judgment-debtor had allowed the notice on him in February 1873 to pass unchallenged.

Held also, following *Chunder Coomar Roy* v. *Bhagobutty Prosonno Roy* (I. L. Rep. 3 Cal. 235) that " applications to enforce a decree" in para. 4 of Article 167, Sched. II., Act IX. of 1871, mean applications, under § 212 or otherwise, by which proceedings in execution are *commenced*, and not applications of an incidental kind made during the pendency of such proceedings, and therefore that the application of 17th February 1870 for issue of a warrant of attachment did not give a fresh starting-point. PRABACHARROW *v.* POTTANNA. *Kernan* and *Kindersley*, JJ...**I. L. Rep. 2 Mad. 1, 1878.**

LIMITATION—*contd.*

90. —— *Act XV. of* 1877, §§ 4 *and* 12—*Sched. II., Art.* 177—*Petition for Leave to appeal to the Privy Council.*] *Held per Stuart*, C.J. (*Spankie*, J., dissenting), that in computing the period of limitation prescribed in Art. 177, Sched II., Act XV. of 1877, for an application for leave to appeal to the Privy Council, the time requisite for obtaining a copy of the judgment on which the decree, against which leave to appeal is sought is founded, cannot be excluded under the provisions of § 12 of Act XV. of 1877. In the sections of the Code of Civil Procedure (Act X. of 1877) relating to appeals to the Privy Council, there is a clear distinction between applications or petitions to appeal, and appeals themselves, *i.e.*, admitted appeals. The ambiguous expression in § 12 of Act XV. of 1877, "where a decree is appealed against," must be understood to mean a proceeding in the way of appeal for which a copy of a judgment is required. But that provision of § 12 does not apply to Privy Council appeals, nor does § 4 of that Act compel the application of the whole provisions of § 12 to such appeals, but only such of them as are appropriate to an application to appeal to the Privy Council. A copy of the judgment on which the decree sought to be appealed against is based, is not necessary for the purpose of an application to appeal to the Privy Council. The procedure and all questions relating to Privy Council appeals ought to be determined solely with reference to the provisions contained in Ch. XLV. of the Civil Procedure Code (Act X. of 1877) which regulate such appeals, and those provisions do not make a copy of the judgment appealed a requirement suitable to and called for in an application for leave to appeal. Neither, therefore, on the true construction of §§ 4 and 12 of Act XV. of 1877, nor by any provision of the Civil Procedure Code, nor for any necessary purpose, does § 12 of Act XV. of 1877 apply to Privy Council appeals. The limitation provided for such appeals by Art. 177 of Sched. II. of that Act, is distinct and imperative, and cannot be enlarged or in any way qualified by § 12 of the same Act...JAWAHIR LAL *v.* NARAIN DAS ..**I. L. Rep. 1 All. 644, 1878.**

See **Letters Patent—Allahabad—Cl. 10. 2.**

FAZUL MUHAMAD *v.* PHUL KUAR...
I. L. Rep. 2 All. 192.

91. —— *Act XV. of* 1877, § 14—*Deduction of Time occupied by Former Suit—Due Diligence*

Digitized by Google

LIMITATION—*contd.*

— Collector's Certificate—Act XXIII. of 1871.] The non-production by the plaintiff of the Collector's certificate necessary under Act XXIII. of 1871, to give jurisdiction to the Civil Courts, does not necessarily constitute such a want of due diligence on the plaintiff's part as to disentitle him to the deduction of time allowed by § 14 of Act XV. of 1877. PUTALI MEHETI *v.* TULJA. *West* and *Pinhey*, JJ.....**I. L. Rep. 3 Bom. 223, 1879.**

S. C. under **Res Judicata. 7.**

92. ——*Act XV. of* 1877, *Sched. II., Art.* 10—*Pre-emption—Limitation.*] On the 19th of December 1876, *A.* gave *T.* a mortgage of his share in a certain village. The terms of the mortgage were that *A.* should remain in possession of his share, and pay the interest on the mortgage money annually to the mortgagee, who, in the event of default in payment of the interest, was empowered to sue for actual possession of the share. On the 19th of May 1877, *T.*'s name was substituted for that of *A.* in the proprietary registers in respect of the share. On the 8th of February 1878, *G.* sued *T.* and *A.* to enforce his right of pre-emption in respect of the share, alleging that his cause of action accrued on the 19th of May 1877, and that *A.*, notwithstanding the mutation of names, was still in possession. *T.* alleged that he had been in possession since the execution and registration of the deed :—

Held, that whether *T.* had been in plenary possession since the date of the deed, or whether in accordance with the terms of the deed, he had only such constructive or partial possession of it as was involved in the receipt of interest on the loan secured by the mortgage, the plaintiff was equally bound to have brought his suit within a year from the date of the deed, and was not entitled to reckon the year from the date on which the possession of the mortgagee of the share was, rightly or wrongly, recognized by the Revenue Department. The suit, therefore, was barred by Art. 10 of Sched. II. of Act XV. of 1877. GULAB SINGH *v.* AMAR SINGH. *Pearson* and *Spankie*, JJ...**I. L. Rep. 2 All. 237, 1879.**

93. —— *Act XV. of* 1877, *Sched II., Art.* 75—*Oral Agreement—Debt payable by Instalments.*] *A* entered into a verbal agreement with *B.* to pay a debt due in monthly instalments, *B.* reserving to himself the right to claim payment of the whole sum due on default of three successive instalments. *A.* failed to pay any instalment. Four years after the first instalment became due, *B.* sued *A.* to recover the sum due on the various instalments not barred by limitation :—

Held, that *B.* was not bound to sue for the whole amount due directly on *A.*'s failure to pay the three successive instalments.

Art. 75 of Sched. II., Act XV. of 1877, does not apply, according to its strict terms, to a suit brought on a verbal contract. KOYLASH CHUNDER DASS *v.* BOYKOONTO NATH CHUNDRA. *Jackson* and *Cunningham*, JJ...**I. L. Rep. 3 Cal. 619, 1878.**

94. —— *Sched. II., Art.* 120—*Arts.* 62, 132 —*Suit for* Haqq-i-Chaharam *based on Custom.*] The plaintiff, the proprietor of a certain mohulla, sued the defendant, who had purchased a house situated in the mohulla at a sale in execution of his own decree, for one-fourth of the purchase money, founding his claim on an ancient custom obtaining in the mohulla, under which the proprietor thereof received one-fourth of the purchase money of houses situated therein, whether sold privately or in execution of a decree :—

Held, that the claim was founded on ancient custom, and it could not be maintained that the record of that ancient custom in the administration paper was a contract, express or implied, as between the owner of the mohulla and the mohulladar. The claim, therefore, being based on ancient usage, and not on contract, Art. 62 of Sched. II., of Act XV. of 1877, did not apply, nor did Art. 132 of that schedule. The "*haqqs*" referred to in the explanation, and described as fees, are fixed charges on immoveable property, of which payment could be enforced by sale of the property so charged.

But, there being no limitation expressly provided for such suits, Art. 120, Sched. II., Act XV. of 1877 governed the limitation thereto. KIRATH CHAND *v.* GANESH PRASAD...*Spankie* and *Straight*, JJ...**I. L. Rep. 2 All. 358, 1879.**

95. —— *Act XV. of* 1877, *Sched. II., Art.* 171—*Decree—Execution—Judgment-Creditor—Representative.*] The provision of the Limitation Act XV. of 1877, Sched. II., Art. 171, which gives a period of sixty days to a person claiming to be the legal representative of a deceased plaintiff under § 363 or 365 of the Civil Procedure

Digitized by Google

LIMITATION—*contd.*

Code (Act X. of 1877), does not apply to the representative of a deceased judgment-creditor claiming admission to continue execution proceedings commenced by him. The Civil Procedure Code (Act X. of 1877) does not provide that applications for execution shall, like suits, abate by the death of the judgment-creditor; such a representative may, therefore, come in at any time, as his coming in is contemplated by Art. 179, Expl. 1, Sched. II., Act XV. of 1877, subject always to the same conditions as would apply to his principal. GOLABDAS *v.* LAKSHMAN NARHAR. *West* and *Pinhey*, JJ.....**I. L. Rep. 3 Bom. 221, 1879.**

96. —— *Act XV. of* 1877, *Sched. II., Art.* 178 — *Execution of Decree — Confirmation of Sale—Certificate of Sale—Application for possession—Act VIII. of* 1859, §§ 263, 264.] *A.* obtained a money decree against *B.* on the 25th of January 1872, in execution of which, property belonging to *B.* was sold on the 9th of September 1874, *A.* himself becoming the purchaser. The sale was confirmed on the 9th of October 1874, but the certificate of sale was not issued till the 23rd of January 1878. A. applied for possession on the 2nd of April 1879:—

Held, that the right to apply for possession contemplated in §§ 263 and 264 of Act VIII. of 1859 (corresponding with §§ 318, 319 of the Civil Procedure Code—Act X. of 1877) accrued on the date the certificate of sale was issued, and not that on which the sale was confirmed, and that, therefore, the period of limitation against the purchaser counted from the former date. BASAPA *v.* MARYA. *Westropp*, C.J., *Kemball* and *F. D. Melvill*, JJ...**I. L. Rep. 3 Bom. 433, 1879.**

97. —— *Act XIV. of* 1859, § 1, *Cl.* 16—*Declaratory Decree.*] *B.* died leaving him surviving two widows, *K.* and *R.* Some time after *B.*'s death, *P.*, the plaintiff, was born to *R.*, on the 15th September 1847. Before his birth the Revenue authorities made over a part of *B.*'s *watan* lands to *K.*, and placed the remainder under sequestration until 1865. On the birth of the plaintiff, *R.* petitioned the Revenue authorities, claiming the *watan* lands for the plaintiff as *B.*'s son; but her petition was, on the 15th February 1849, rejected, on the ground that the plaintiff was not the son of *B.*, and the Revenue authorities decided that *K.* should be allowed to retain possession of the

LIMITATION—*contd.*

watan. On the 16th March 1872, *K.* adopted a son *B. A.*, as a son to her deceased husband. In a suit brought by the plaintiff against *K.* and such alleged adopted son *B. A.* on the 4th December 1872, for a declaration that he, the plaintiff, was the son of *B.*, and to set aside the adoption of *B. A.*, the defendants contended that the suit was barred by limitation under Act XIV. of 1859:—

Held, that the suit, not being for the recovery of immoveable property, but to set aside an adoption, was within time—Cl. 16, § 1 of Act XIV. of 1859 being the enactment applicable.

Held also, that, independently of any claim to the property of *B.*, a suit to set aside the adoption of *B. A.* would lie for the plaintiff, if he were the son of *B.*; inasmuch as, even if his claim to the property were, as against *K.*, barred by lapse of time, the plaintiff would be entitled to an injunction against any intervention of *B. A.* in performing the *Shraddh* or other ceremonies for the benefit of *B.*, or assuming the *status* of adopted son of *B.*; and moreover the Legislature has, in Act VII. of 1870 and Act IX. of 1871, distinctly recognized the right of a person to bring a suit to set aside an adoption as a substantive proceeding, independent of any claim to property. KALOVA *v.* PADAPA BHUJANGRAV. *Westropp*, C.J., and *N. Harridas*, J...**I. L. Rep. 1 Bom. 248, 1876.**

LIMITATION ACT XIV. OF 1859—§ 1, Cl. 10.

See **Compromise. 1.**

RANI MEWA KUWAR *v.* RANI HULAS KUWAR.....**L. Rep. 1 I. A. 157.**

See **Limitation. 80.**

—— § 1, Cl. 12.

See **Compromise 1.**

RANI MEWA KUWAR *v.* RANI HULAS KUWAR...**L. Rep. 1 I. A. 157.**

—— § 1, Cl. 12—Immoveable Property—*Toda Giras Hak* payable by Inamdar from Rents of Village.

See **Toda Giras Hak.**

MAHARANA FATTEHSANGJI *v.* DESAI KALLIANRAI...**L. Rep. 1 I. A. 34.**

Digitized by Google

LIMITATION ACT XIV. OF 1859—*contd.*

—— Mortgage—Interest in Immoveable Property.

See **Limitation. 31.**

—— § 1, Cl. 13—Maintenance, Suit for—Partition—*Sir* Land held by some Members of Family.

See **Hindu Law—Partition. 9.**

RUNJEET SINGH *v.* KOOER GUJRAJ SINGH.....**L. Rep. 1 I. A. 9.**

See **Limitation. 32.**

—— § 1, Cl. 15.

See **Acknowledgment of Mortgagor's Title. 2.**

DAIA CHAND *v.* SARFARAZ ALI... **I. L. Rep. 1 All. 425.**

—— § 1, Cl. 16.

See **Limitation. 97.**

KALOVA *v.* PADAPA...**I. L. Rep. 1 Bom. 248.**

—— Suit for a Declaratory Decree only.

See **Limitation. 2.**

MORU PATLAJI *v.* GOPAL SATU... **I. L. Rep. 2 Bom. 120.**

—— Maintenance—Suit for.

See **Limitation. 33.**

KULO *v.* LAKSHMIBAI...**I. L. Rep. 2 Bom. 637.**

—— *Toda Giras Hak* payable by Inamdar from Rent of Village.

See **Toda Giras Hak.**

MAHARANA FATTEHSANGJI *v.* DESAI KALLIANRAI...**L. Rep. 1 I. A. 34.**

—— § 2—Trustee.

See **Executor, Estate of. 2.**

LALLUBHAI *v.* MANKUVERBAI...**I. L. Rep. 2 Bom. 388.**

—— § 4—Acknowledgment of Barred Decree.

See **Kistbandi.**

HEERALALL MOOKHOPADHYA *v.* DHUNPUT SINGH...**I. L. Rep. 4 Cal. 500.**

—— § 5.

See **Limitation. 19.**

JUGGERNATH *v.* SYUD SHAH...**L. Rep. 2 I. A. 48.**

LIMITATION ACT XIV. OF 1859—*contd.*

—— § 8.

See **Limitation. 34.**

WATSON *v.* AGA MEHEDEE.....**L. Rep. 1 I. A. 346.**

—— §§ 11, 12—Applicability of—to Act VIII. of 1859, § 246.

See **Hindu Law — Alienation of Ancestral Property. 3.**

MUSST. PHOOLBAS KOONWAR *v.* LALLA JOGESHUR SAHOY...**L. Rep. 3 I. A. 7 ; I. L. Rep. 1 Cal. 226.**

—— § 15.

See **Limitation. 35.**

MADHUB *v.* SHAM CHAND...**I. L. Rep. 3 Cal. 243.**

—— §§ 20, 21.

See **Limitation. 36.**

DELHI AND LONDON BANK *v.* ORCHARD...**L. Rep. 4 I. A. 127; I. L. Rep. 3 Cal. 47.**

LIMITATION ACT IX. OF 1871.

See **Grant by Wife during Absence of Husband.**

BEJOY CHUNDER *v.* ROY PROSONNO...**I. L. Rep. 4 Cal. 327.**

—— §§ 2, 3, 4—Suit on Promissory Note filed in November 1875.

See **Limitation. 11.**

MADHAVAN *v.* ACHUDA.....**I. L. Rep. 1 Mad. 301.**

—— § 4—Explanation.

See **Limitation. 37.**

CHUNDER MOHUN *v.* BHUBON MOHINI...**I. L. Rep. 2 Cal. 389.**

—— §§ 4 and 5—Admission of Time-barred Appeal by Single Judge, *ex-parte*.

See **Time-barred Appeal. 1.**

DUBEY SAHAI *v.* GANESH LAL...**I. L. Rep. 1 All. 34.**

—— Admission of Time-barred Appeal—Sufficient Cause.

See **Time-barred Appeal. 2.**

ZAIBULNISSA BIBI *v.* KULSUM BIBI. **I. L. Rep. 1 All. 250.**

Digitized by Google

LIMITATION ACT IX. OF 1871—*contd.*

—— § 5—Time for Deposit of Money for Costs of Appeal to Privy Council expiring during Vacation.

See **Act VI. of 1874, § 8.**

LALLU GOPEE CHAND.....**I. L. Rep. 2 Cal. 128.**

—— § 5, Cl. *a*.

See **Limitation. 6.**

BISHAN CHAND *v.* AHMAD KHAN... **I. L. Rep. 1 All. 263.**

—— § 7.

See **Alienation by Guardian. 1.**

PROSONNO NATH *v.* AFZOLONESSA. **I. L. Rep. 4 Cal. 523.**

See **Pre-emption. 5.**

RAJA RAM *v.* BANSI...**I. L. Rep. 1 All. 207.**

—— § 10—"Trust for a Specific Purpose."

See **Limitation. 27. 38. 38a. 61.**

—— § 10—"Vested in Trust"—"Good Faith."

See **Hindu Law—Will. 10.**

MANIKLAL *v.* MANCHARSHA...**I. L. Rep. 1 Bom. 269.**

—— § 15.

See **Limitation. 39. 40. 41.**

—— § 19.

See **Amendment of Plaint. 2.**

RAMDOYAL KHAN *v.* AJOODHIA RAM KHAN...**I. L. Rep. 2 Cal. 1.**

—— § 20.

See **Hindu Law—Manager. 1.**

KUMARASAMI *v.* BALA NAGAPPA. **I. L. Rep. 1 Mad. 385.**

—— § 20—Acknowledgment of Debt.

See the Cases under **Acknowledgment of Debt.**

And *see* **Limitation. 42. 43. 44.**

—— § 21.

See **Limitation. 45. 46. 47.**

—— § 22—Joint Claim.

See **Co-Sharers of Land. 4.**

BYDONATH BAG *v.* GRISH CHUNDER ROY...**I. L. Rep. 3 Cal. 26.**

LIMITATION ACT IX. OF 1871—*contd.*

—— § 27—Easement—Prescriptive Right to—Abandonment — Discontinuance—Interruption

See **Easement. 1.**

SHAM CHURN *v.* TARINEY CHURN... **I. L. Rep. 1 Cal. 422.**

—— § 27—*Jalkar.*

See **Jalkar.**

PARBUTTY NATH *v.* MUDHO PAROE. **I. L. Rep. 3 Cal. 276.**

See **Limitation. 48.**

—— § 29.

See **Limitation. 64.**

MANALLY CHENNA *v.* MANGADU... **I. L. Rep. 1 Mad. 343.**

—— Sched. II., Art. 10.

See **Limitation. 49. 92.**

BIJAI RAM *v.* KALU...**I. L. Rep. 1 All. 592.**

GULAB SINGH *v.* AMAR SINGH...**I. L. Rep. 2 All. 237.**

See **Pre-emption. 6.**

JOGESHAR SINGH *v.* JAWAHIR SINGH...**I. L. Rep. 1 All. 311.**

—— Sched. II., Art. 11.

See **Limitation. 50.**

KINMOND *v.* JACKSON.....**I. L. Rep. 3 Cal. 17.**

—— Sched. II., Art. 14—Sale for Arrears of Revenue fraudulently contrived by Co-Sharer.

See **Sale for Arrears of Revenue. 2.**

BHOOBUN CHUNDER SEN *v.* RAM SOONDUR MOZOOMDAR...**I. L. Rep. 3 Cal. 300.**

—— Suit to set Aside Revenue Sale.

See **Limitation. 51.**

ABUL MUNSOOR *v.* ABDUL HAMID. **I. L. Rep. 2 Cal. 98.**

—— Sched. II., Art. 15.

See **Limitation. 52. 54.**

KOYLASH CHUNDER *v.* PREONATH. **I. L. Rep. 4 Cal. 610.**

RAM KISHAN *v.* BHAWANI DAS... **I. L. Rep. 1 All. 333.**

Digitized by Google

LIMITATION ACT IX OF 1871—*contd.*

—— Sched. II., Art. 26.

See **Limitation. 54.**

—— Sched. II., Art. 26—Suit for Compensation for Crops wrongfully removed.

See **Standing Crops. 1.**

PANDHA GAZI *v.* JENNUDDI...**I. L. Rep. 4 Cal. 665.**

—— Sched. II., Art. 40—Standing Crops wrongfully removed—Suit for Compensation—Immoveable Property.

See **Standing Crops. 1.**

PANDAH GAZI *v.* JENNUDDI...**I. L. Rep. 4 Cal. 665.**

—— Sched. II., Art. 40—Mesne Profits misappropriated.

See **Mesne Profits. 5.**

SHURNOMOYEE *v.* PATTA RI SIRKAR. **I. L. Rep. 4 Cal. 625.**

—— Sched. II., Art. 46.

See **Limitation. 53.**

AKILANDAMAL *v.* PERIASAMI...**I. L. Rep. 1 Mad. 309.**

—— Sched. II., Art 60.

See **Limitation. 54, 55.**

—— Sched. II., Art. 72.

See **Limitation. 56.**

—— Sched. II., Art. 85.

See **Attorney and Client. 1.**

ABA ISMAIL *v.* ABA THARA...**I. L. Rep. 1 Bom. 235.**

See **Limitation. 57.**

—— Sched. II., Art. 93.

See **Limitation. 58.**

—— Sched. II., Art. 95.

See **Limitation. 59.**

See **Sale for Arrears of Revenue. 2.**

BHOOBAN CHUNDER SEN *v.* RAM SOONDER SURMA MOZOOMDAR...**I. L. Rep. 3 Cal. 300.**

—— Sched. II., Art. 100.

See **Limitation. 60.**

LIMITATION ACT IX. OF 1871—*contd.*

—— Sched. II., Art. 109—Mesne Profits misappropriated.

See **Mesne Profits. 5.**

SHURNOMOYEE *v.* PATTARI SIRKAR.....**I. L. Rep. 4 Cal. 625.**

—— Sched. II., Art. 113.

See **Limitation. 61.**

—— Sched. II., Art. 118.

See **Limitation. 54.**

RAM KISHAN *v.* BHAWANI DAS... **I. L. Rep. 1 All. 333.**

—— Sched. II., Art. 118—Suit for contribution.

See **Limitation. 60.**

FUCKORUDDEEN *v.* MOHIMA CHUNDER.....**I. L. Rep. 4 Cal. 529.**

—— Sched. II., Art. 118—Interest—*Dam-dupat*—Mortgage.

See **Assignment of Mortgage.**

GANPAT *v.* ADARJI...**I. L. Rep. 3 Bom. 312.**

—— Sched. II., Art. 118—Right to Exclusive Worship of Idol.

See **Right to Worship of Idol.**

EHSAN CHUNDER ROY *v.* MONMOHINI DASSI...**I. L. Rep. 4 Cal. 683.**

—— Sched. II., Art. 118—Suit by Creditors to impeach Mortgages made by Executors and Residuary Devisees of Hindu Testator.

See **Limitation. 38a.**

GREENDER CHUNDER *v.* MACKINTOSH...**I. L. Rep. 4 Cal. 897.**

—— Sched. II., Arts. 119 and 120.

See **Sale of Under-Tenure. 2.**

UNNODA CHURN DASS BISWAS *v.* MOTHURA NATH DASS BISWAS...**I. L. Rep. 4 Cal. 860.**

—— Sched. II., Art. 121-

See **Limitation. 62.**

SAKHARAM *v.* GANESH.....**I. L. Rep. 3 Bom. 193.**

Digitized by Google

—— Sched. II., Art. 122.

See **Limitation. 63.**

—— Sched. II., Art 123.

See **Limitation. 64,** and **Will. 1.**

—— Sched. II., Art. 127.

See **Limitation. 65.**

—— Sched. II., Art 128—Arrears of Maintenance.

See **Hindu Law—Maintenance of Widow. 4.**

JIVI *v.* RAMJI...**I. L. Rep. 3 Bom. 207.**

—— Sched. II , Art. 129.

See **Limitation. 66.**

—— Sched. II., Art. 131—Right to Turn of Worship of Idol.

See **Right to Worship of Idol.**

EHSAN CHUNDER ROY. *v.* MONMOHINI DASSI...**I. L. Rep. 4 Cal. 683.**

—— Sched. II., Art. 132—Suit for Foreclosure.

See **Assignment of Mortgage.**

GANPAT *v.* ADARJI....**I. L. Rep. 3 Bom. 312.**

—— Sched. II., Art. 132—Interest—*Damdupat*—Mortgage.

See **Assignment of Mortgage.**

GANPAT *v.* ADARJI...**I. L. Rep. 3 Bom. 312.**

—— Sched. II., Arts. 133, 134.

See **Limitation. 38a.**

GREENDER CHUNDER *v.* MACKINTOSH.....**I. L. Rep. 4 Cal. 897.**

—— Sched. II., Art. 134 —"Conveyed in Trust"—"Good Faith."

See **Hindu Law—Will. 10.**

MANIKLAL *v.* MANCHERSHA...**I. L. Rep. 1. Bom. 269.**

—— Sched. II., Art. 143—Suit by Hindu excluded from Joint Family Property.

See **Limitation. 65.**

KALI KISHORE *v.* DHUNUNJOY...**I. L. Rep. 3 Cal. 228.**

—— Sched. II., Art. 145.

See DIWAN MANWAR ALI *v.* ANNODAPERSAD RAI.....**I. L. Rep. 5 Cal. 645.**

See **Jalkar.**

PABUTTY NATH *v.* MUDHO PAROE. **I. L. Rep. 3 Cal. 276.**

—— Sched. II., Art. 148.

See **Acknowledgment of Mortgagor's Title. 1. 2. 3.**

DAIA CHAND *v.* SARFARAZ...**I. L. Rep. 1 All. 117.**

DAIA CHAND *v.* SARFARAZ ALI...**I. L. Rep. 1 All. 425.**

RAMANI BIBI *v.* HULASA KUAR...**I. L. Rep. 1 All. 642.**

—— Suit to Redeem—Adverse Possession by Mortgagee in Possession.

See **Mortgage. 37.**

ALI MUHAMMAD *v.* LALTA BUKHSH. **I. L. Rep. 1 All. 655.**

—— Sched. II., Art. 149—Suit for Foreclosure.

See **Assignment of Mortgage.**

GANPAT *v.* ADARJI...**I. L. Rep. 3 Bom. 312.**

—— Sched. II., Art. 149—Suit for Foreclosure—Suit barred by Act XIV. of 1859.

See **Limitation. 17.**

RAMCHANDER *v.* JUGGUTMONMOHINI...**I. L. Rep. 4 Cal. 283.**

—— Sched. II., Art. 157.

See **Limitation. 67.**

PROSUNNO CHUNDER *v.* PROSUNNO COOMAR...**I. L. Rep. 2 Cal. 123.**

—— Sched. II., Art. 158.

See **Limitation. 68.**

GUJAR *v.* BARVE...**I. L. Rep. 2 Bom. 673.**

—— Sched. II., Art. 166.

See **Limitation. 69.**

UMIASHUNKUR *v.* CHOTALAL.....**I. L. Rep. 1 Bom. 19.**

—— Sched. II., Art. 167—Decree in Favour of Firm in Name of Agent—Application for Execution by Agent succeeding Agent named in Decree.

Digitized by Google

LIMITATION ACT IX. OF 1871—*contd.*

See **Execution of Decree. 13.**

LACHMAR BIBI *v.* PATNI RAM... **I. L. Rep. 1 All. 510.**

—— Sched. II., Art. 167—Decree on Specially Registered Bond.

See **Appeal—Civil. 12.**

WILAYAT-UN-NISSA *v.* NAJIB-UN-NISSA.....**I. L. Rep. 1 All. 583.**

—— Sched. II., Art. 167—Execution of Decree—Limitation.

See **Limitation. 70 to 89.**

LIMITATION ACT XV. OF 1877.

—— § 2.

See **Limitation. 28.**

APPASAMI *v.* AGHILANDA.....**I. L. Rep. 2 Mad. 113.**

—— § 4—Petition for Leave to appeal to Privy Council—Exclusion of Time necessary to obtain Copy of Judgment.

See **Limitation. 90.**

JAWAHIR LAL *v.* NARAIN DAS...**I. L. Rep. 1 All. 644.**

—— § 12.

See **Limitation. 90,** *ubi supra.*

—— § 14.

See **Limitation. 91.**

PUTALI *v.* TULJA.....**I. L. Rep. 3 Bom. 223.**

—— § 22—Adding Respondent to Appeal after Time allowed.

See **Parties to Suit. 8.**

THE COURT OF WARDS *v.* GAYA PERSAD...**I. L. Rep. 2 All. 107.**

—— Suit against Municipality—Substitution of President for Secretary as Defendant—Limitation.

See **Act XV. of 1873, § 43.**

MANNI KASAUNDHAN *v.* CROOKE... **I. L. Rep. 2 All. 296.**

—— § 28—Extinguishment of Debt—Suit for Foreclosure.

See **Limitation. 17.**

RAMCHUNDER *v.* JUGGUTMONMOHINEY...**I., L. Rep. 4 Cal. 283.**

LIMITATION ACT XV. OF 1877—*contd.*

—— Sched. II., Art. 10.

See **Limitation. 29, 92.**

LACHMI NARAIN LAL *v.* SHEOMBAR LAL...**I. L. Rep. 2 All. 409.**

GULAB SINGH *v.* AMAR SINGH... **I. L. Rep. 2 All. 237.**

—— Sched. II., Art. 62—Suit for *Haqq-i-Chaharam* founded on Custom, not under—but under Art. 120.

See **Limitation. 94.**

KIRATH CHAND *v.* GANESH PRASAD...**I. L. Rep. 2 All. 358.**

—— Sched. II., Art. 62.

See **Limitation. 25.**

BHAWANI KUAR *v.* RIKHI RAM... **I. L. Rep 2 All. 354.**

—— Sched. II., Arts. 66, 67, 75, 80—Instalment Bond—Cause of Action.

See **Limitation. 24.**

BALL *v.* STOWELL...**I. L. Rep. 2 All. 322.**

—— Sched. II., Art. 75.

See **Limitation. 93.**

KIRATH *v.* GANESH...**I. L. Rep. 2 All. 358.**

—— Sched. II., Art. 132—Suit for *Haqq-i-Chaharam* founded on Custom, not under—but under Art 120.

See **Limitation. 94.**

KIRATH CHAND *v.* GANESH PRASAD.....**I. L. Rep. 2 All. 358.**

—— Sched. II., Art. 171.

See **Limitation. 95.**

GOLABDAS *v.* LAKSHMAN...**I. L. Rep. 3 Bom. 221.**

—— Sched. II., Art. 178.

See **Limitation. 96.**

BASAPPA *v.* MARYA...**I. L. Rep. 3 Bom. 433.**

LINGAYETS ARE SUDRAS.

See **Hindu Law—Adoption. 6.**

GOPAL *v.* HANMANT...**I. L. Rep. 3 Bom. 273.**

Digitized by Google

LIQUOR—ILLICIT SALE OF.

See **Illicit Sale of Liquor.**

EMPRESS *v.* SEYMOUR...**I. L. Rep. 1 All. 630.**

EMPRESS *v.* DHARAMDAS...**Ibid. 635.**

EMPRESS *v.* MOHINDRA LAL...**Ibid. 638.**

LIS PENDENS.

See **Mahomedan Law — Right of Creditors to follow the Estate of a Debtor into the hands of a Purchaser from the Heir.**

BAZAYET HOSSEIN *v.* DOOLI CHUND. **I. L. Rep. 4 Cal. 402.**

See **Abatement of Appeal—Civil. 1.**

MORESHWAR *v.* KUSHABA...**I. L. Rep. 2 Bom. 248.**

—— *Quære*, whether Doctrine of—applies to Purchase in Execution of Decree.

See **Res Judicata. 29.**

ALI SHAH *v.* HUSAIN BAKSH...**I. L. Rep. 1 All 588.**

—— *Purchaser* pendente Lite—*Execution of Decree—Notice of Proceedings.*] The property in question was mortgaged by *C.* to *R.* under two mortgage bonds. On the 17th September 1874, *R.* obtained a decree declaring his lien on the mortgaged property, and, in execution of the decree, the property in question was purchased by the plaintiff's vendor on the 23rd February 1875, and by him sold to the plaintiff on the 15th of April 1875.

Prior to this sale, *i.e.*, on the 7th September 1874, the defendant, having no notice of any encumbrances on the property, obtained a decree against *C.*, and in applying for execution thereof, described the property in question as lakhiraj, and purchased the property himself at the execution sale on the 7th of December 1874.

In a suit brought by the plaintiff to establish his right to possession :—*Held*, that the defendant having purchased the property, or rather the right and interest in it, of his debtor, at a sale in execution of his own decree, at a time when there was pending in the same Court a suit against the same debtor brought by his mortgagee to recover a debt secured by the mortgage of property including that in dispute, acquired nothing more than the mortgagor's equity of redemption, and did not acquire the

LIS PENDENS—*contd.*

land free of the encumbrance created by the debtor. A purchaser under such circumstances is bound by *lis pendens*. *Raj Kissen Mookerjee* v. *Radha Mahdub Haldar* (21 W. Rep. 349) approved of.

Held also, that the misdescription by the defendant, in his application for execution of his own decree, of the lands in question as lakhiraj property, made it impossible for the mortgagee, decree-holder, to be aware that he, the defendant, claimed any interest in the mortgaged property which did not include any lakhiraj land, and was sufficient to relieve the mortgagee, decree-holder, of the obligation, if any existed, of giving the defendant notice of his proceedings in execution.

The defendant, therefore, had no right to maintain possession as against the plaintiff, whose title was derived from the sale held in accordance with the decree obtained by the mortgagee. LALA KALI PROSAD *v.* BALI SINGH. *Jackson* and *Tottenham*, JJ...**I. L. Rep. 4 Cal. 789 ; 3 Cal. Rep. 396, 1878.**

LIST OF CONTRIBUTORIES—Evidence to amend, explain, or contradict.

See **Company—Winding up—Contributory. 1.**

THE LONDON, BOMBAY, AND MEDITERRANEAN BANK *v.* BHANJI ZUTANI...**I. L. Rep. 2 Bom. 116.**

LOCAL INVESTIGATION—*Power of the District Judge to interfere with Circular Orders No. 41 of 1866 (2nd of October) and 25 of 1870 (25th of August).*] In a suit for the possession of land, the boundaries of which were disputed, the Subordinate Judge ordered an Ameen to make a local investigation, and reported his order to the District Judge, who refused to allow the investigation to proceed :—

Held, that this was a case coming within the provisions of Circular Order No. 41, dated the 2nd October 1866, which authorizes local investigations by Ameens when it is necessary to ascertain by measurement disputed areas of land, and that the District Judge had no authority to stay the investigation.

Per Prinsep, J.—All that the District Judge was entitled to do under Circular Order No. 25, dated the 25th of August 1870, was to express his opinion as to the propriety or otherwise of

Digitized by Google

LOCAL INVESTIGATION—*contd.*

the Subordinate Judge's order. NIROD KRISHNA ROY *v.* WOOMANATH MOOKERJEE. *Markby*, and *Prinsep*, JJ...**I. L. Rep. 4 Cal. 718; 3 Cal. Rep. 234, 1878.**

LONG POSSESSION—Evidence of—Strong Element in proof of Mirasdar's Title.

See **Miras. 1.**

BABAJI *v.* NARAYAN...**I. L. Rep. 3 Bom. 340.**

LOPEZ'S CASE—DOCTRINE IN.

See **Alluvial Lands. 1.**

RADHA PROSAD *v.* RAM COOMAR .. **I. L. Rep. 3 Cal. 796.**

LORD CANNING'S PROCLAMATION OF THE 15th OF MARCH 1858—Effect of.

See **Confiscation in Oudh. 1. 2.**

NAWAB MALKA JAHAN *v.* DEPUTY COMMISSIONER OF LUCKNOW. **L. Rep. 6 I. A. 63.**

PRINCE MIRZA JEHAN *v.* NAWAB ASSUR BAHU...**Ibid. 76; I. L. Rep. 4 Cal. 727.**

LOSS OF CASTE—Since Act XXI. of 1850 works no Forfeiture of Right or Property.

See **Hindu Law—Disqualification to Inherit. 7.**

HONAMMA *v.* TIMANBHAT...**I. L. Rep. 1 Bom. 559.**

—— *Act XXI. of* 1850—*Hindu Law—Right of Father to Custody of Infant Daughter.*] A Hindu who has been deprived of caste by the members of his caste on account of intending, for a money consideration, to give his infant daughter in marriage to a man both old and impotent, does not, under Hindu law, thereby forfeit his right as guardian to the custody of his infant daughter. Even if there were a rule of Hindu law which, in such a case, inflicted a forfeiture of such right, such rule could not, with reference to the provisions of Act XXI. of 1850, be enforced.

Where, accordingly, because a Hindu had been deprived of caste for the above-mentioned reason, a person sued to have the custody of the infant himself as her guardian in lieu of her father, and as such to be declared empowered to arrange for her marriage to a suitable husband, basing his suit on Hindu law :—

LOSS OF COST—*contd.*

Held, that the suit was not maintainable.

Held, also, that the lower Courts properly refused to cause the intended husband in this case to be medically examined as to his alleged impotency, there being no provision of law authorizing such a procedure, and he not even being a party to the suit. KANAHI RAM *v.* BIDDYA RAM...*Stuart*, C.J., and *Pearson*, J...**I. L. Rep. 1 All. 549, 1878.**

LOSS BY FIRE—Exception of Liability for—in Bill of Lading.

See **Bill of Lading. 1.**

CHIN HONG & Co. *v.* SENG MOH & Co.....**I. L. Rep. 4 Cal. 736.**

LUNATIC — Appointment of Manager of Estate of.

See **Act XXXV. of 1858, § 9.**

MANOHAR LAL *v.* GAURI SHANKAR .....**I. L. Rep. 1 All. 476.**

—— *Act X. of* 1872, § 426—*Jurisdiction.*] The jurisdiction of the Criminal Courts over an accused, declared under § 426 of Act X. of 1872 to be of unsound mind, ceases after the transmission of such accused to the place of safe custody appointed by the local Government, and such authority can only be revived when the prisoner is sent back to the Magistrate, under § 432, on a certificate that he is competent to make his defence. EMPRESS *v.* JOY HARI KOR. *Markby* and *Prinsep*, JJ ..**I. L. Rep. 2 Cal. 356, 1877.**

MADRAS ACT II. OF 1864.

See **Rights of Mirasdars. 1.**

FAKIR MUHAMMAD *v.* TIRUMALA CHARIAR.....**I. L. Rep. 1 Mad. 205.**

MADRAS ACT III OF 1865—*Act XVI. of* 1874—*Jurisdiction—Madras Reg. I. of* 1805—*Act XVII. of* 1840.] Madras Act III. of 1865, though repealed by Act XVI. of 1874, is still in force so far as it established a jurisdiction over offences. Magistrates in the Madras Presidency, therefore, are not deprived of jurisdiction, over offences created by special and local laws, given them by Madras Act III. of 1865. REG. *v.* KANDAKORA. *Innes* and *Kernan*, JJ...**I. L. Rep. 1 Mad. 223, 1876.**

Digitized by Google

MADRAS ACT VIII. OF 1865—§ 1—*Landholder—Farmer—Tenant—Suit to compel Acceptance of* Patta.] In a suit by the plaintiff to compel the defendant to accept pattas for certain lands held by him in the zemindari of *S.*, it appeared that the zemindar of *S.* mortgaged the property in question (together with other property), leasing it out at the same time to the mortgagee at an annual rent, on condition of the amount being credited annually in liquidation of the debt, and that after the death of the mortgagee, his heirs transferred the lease to the plaintiff together with the mortgage bond:—

Held, that Madras Act VIII. of 1865 did not apply to the case. The term "tenant" as employed in the Act does not mean any person who takes land from any other person. It is defined by § 1 of the Act as including "all persons who are bound to pay rent to a landholder." A tenant, then for the purposes of the Act, is a lessee from a "farmer" or "landholder." The term "farmer" is not used in its ordinary English sense of one who himself cultivates land. Farmers under the Act are men who contract to take all the profits of certain lands, and pay a specified sum to the person from whom they take. "Landholder" includes direct descendants of those named in § 1 of the Act. The plaintiff was not a direct descendant of any such person, and was therefore not a "landholder" under the Act. ZINULABDIN ROWTEN *v.* VIJIEN VIRAPATREN. *Holloway* and *Kindersley*, JJ...**I. L. Rep. 1 Mad. 49, 1876.**

—— § 3—Lease—Patta—Registration.

See **Registration. 11.**

RAMASWAMI CHETTI *v.* THE COLLECTOR OF MADURA.....**L. Rep. 6 I. A. 170.**

—— § 4—*Landlord and Tenant—Exchange of* Pattas *and* Muchalkas.] The pattas and muchalkas required by Madras Act VIII. of 1865 should be made and exchanged as soon as conveniently may be after the creation, and during the continuance of the tenancy, the terms of which they are meant to express.

The 4th Section of the Act requires no more than that the pattas should mention the rate and proportion of the produce to be given, and not the specific quantity or number of measures. SESHADRI AYYANGAR *v.* SANDANAM. *Morgan*, C. J., and *Kindersley*, J...**I. L. Rep. 1 Mad. 146, 1872.**

MADRAS ACT VIII. OF 1865—*contd.*

1. —— § 9 — *Suit to enforce Acceptance of Patta—Tender of Patta.*] In a suit by a landlord to compel acceptance of pattas and grant of muchalkas in exchange by three ryots, joint pattadars, it not appearing that the plaintiff had tendered a patta to the defendants, or that such tender had been dispensed with:—*Held*, that the suit was rightly dismissed.

Where the parties are bound to exchange written engagements in the form of patta and muchalka, the landholder must, in order to maintain a suit to enforce acceptance of the patta, show that he on his part has done what the law requires of him. A mere indefinite demand or notice, whether written or unwritten, is not sufficient to sustain such a suit. A patta should be tendered for the tenant's acceptance, and on his refusal to accept, the landholder's right to sue to enforce acceptance arises. SAYUD CHANDA MIAH SAHIB *v.* LAKSHMANA AIYANGAR. *Morgan*, C.J., and *Innes*, J...**I. L. Rep. 1 Mad. 45, 1876.**

2. —— § 9—*Jurisdiction—Revenue Court.*] A suit under § 9 of Madras Act VIII. of 1865 to enforce the acceptance of a patta, is not a suit to enforce the terms of a tenancy within the meaning of § 7 of that Act, but a suit to determine those terms. ZEMINDAR OF DEVARACOTA *v.* VEMURI VENKAYYA. *Innes* and *Kindersley*, JJ.....**I. L. Rep. 1 Mad. 389, 1878.**

—— § 11, Rule IV.

See **Lease by Zemindar.**

RAMANADAN *v.* SRINIVASA MURTHI ..**I. L. Rep. 2 Mad. 80.**

—— § 49—*Distraint—Cause of Action.*] The defendants, the landlords, distrained certain produce, the property of the plaintiff, their lessee, in view to selling it for alleged claims for rent. The Sub-Collector, finding the formalities required by Madras Act VIII. of 1865 had not been observed, removed the attachment, and directed the restoration of the property. The defendants having refused to restore the property, the plaintiff brought this suit, under Madras Act VIII. of 1865, to recover the value of the produce:—*Held*, that such wrongful withholding of the property was an act in disregard and defiance of the Act, and did not constitute a cause of action within the meaning of § 49 triable by a summary suit under that Act. SRINIVASA *v.* EMPERUMANA. *Innes*, C.J.

Digitized by Google

MADRAS ACT VIII. OF 1865—*contd.*

(Offg.), and *Forbes*, J...**I. L. Rep. 2 Mad. 42, 1878.**

MADRAS ACT III. OF 1871 — *Artisan—Washerman.*] A washerman is not an artizan within the meaning of Madras Act III. of 1871. *Ex parte* POONEN. *Holloway* and *Kindersley*, JJ. **I. L. Rep. 1 Mad. 174, 1876.**

2.——§§ 57 *to* 61, 85—*Tax illegally levied—Suit to recover—Construction of Statutes.*] Section 85 of Madras Act III. of 1871 does not bar an action to recover money wrongfully levied as a tax because the so-called tax had no legal existence, the distinction being clear between contesting the incidence of a tax lawfully imposed, and suing for sums so wrongfully collected. There is no provision in that Act for levying or creating any tax described in § 57 of the Act at all, otherwise than by the prescribing of the machinery for its levy in §§ 58 to 61. If that machinery is not applied, no liability to pay such tax can arise. Where the Municipal Commissioners of a town had not determined on the imposition of a tax of that description until the 22nd of April of the official year for which such tax was imposed, and the list of persons to be taxed for that year was not completed until the 14th of July of the same year, and notice to *A.* of his assessment under such tax was not given to him till the 8th of October in that year :—

Held, that the tax had no legal existence, and that *A.* was entitled to recover from the Commissioners money which they had collected from him as and for such so-called tax. *Bates* v. *The Municipal Commissioners of the Town of Bellary* (7 Mad. H. C. Rep. 249) followed. The fact that the sanction required by § 57 had not been given till after the period prescribed for the acts to be done to constitute the tax, thereby rendering compliance with the machinery prescribed by the Act impossible, did not affect the illegality of the tax. The proper inference from that circumstance was, not that the subject should be taxed, because fulfilment of the conditions on which the tax was to fall on him was impossible, but that in such circumstances the imposition of the tax was illegal. A statute not only enacts its substantive provisions, but, as a necessary result of legal logic, it also enacts as a legal proposition everything essential to the existence of the specific enactments. In the present case the Legislature had imposed certain duties both

MADRAS ACT III. OF 1871—*contd.*

on the taxpayer and the Commissioners. Those duties—as to the taxpayer, enforceable by penalties—are to be performed at a particular time. There was here, therefore, a latent proposition of law, *viz.*, that there should be a legally sanctioned tax at the period at which the duties are to be performed; and this proposition so implicitly contained was as clear and binding as if it had been explictly declared. LEMAN v. DAMODARAYA. *Holloway* and *Innes*, JJ.....**I. L. Rep. 1 Mad. 158, 1876.**

3. —— *Tolls, Farming of—Agreement not under Seal.*] An agreement was entered into between the Commissioners of the town of Vizianagram and the defendant, farming the tolls of the town to the defendant for one year. The agreement was duly signed by the defendant, but was not executed under seal by the Commissioners, as required by Madras Act III. of 1871. In a suit by the President on behalf of the Commissioners, brought after the expiry of the year, for a portion of the sum due to them by the defendant :—

Held, that inasmuch as the plaintiff had fully performed all things to be performed on his part, and both parties had acted under the contract, though it was not formally executed by the Commissioners, and as the defendant had had the full benefit of the contract, it would be contrary to equity and good conscience to allow him to set up as a ground of defence that there was no contract in point of law. GOODRICH v. VENKANNA .....**I. L. Rep. 2 Mad. 104.**

—— § 61—Tax legally imposed—Jurisdiction of Civil Courts—Suits to contest Incidence.

See **Jurisdiction. 1.**

KAMAYYA v. LEMAN...**I. L. Rep. 2 Mad. 37.**

MADRAS REGULATION XXV. OF 1801.

See **Polliem. 1.**

THE COLLECTOR OF TRICHINOPOLY v. LEKKAMANI.....**L. Rep. 1 I. A. 282.**

MADRAS REGULATIONS XXV., XXVII. AND XXX. OF 1802.

See **Rights of Mirasdars.**

FAKIR MUHAMMAD v. TIRUMALA CHARIAR.....**I. L. Rep. 1 Mad. 205.**

Digitized by Google

MADRAS REGULATION XXXI. OF 1802.

See **Polliem. 1.**

THE COLLECTOR OF TRICHINOPOLY *v.* LEKKAMANI...**L. Rep. 1 I. A. 282.**

MADRAS REGULATION IX. OF 1803— § 55.

See **Jurisdiction. 13.**

COLLECTOR OF SEA CUSTOMS, MADRAS *v.* PANNIAR CHITHAMBARAM...**I. L. Rep. 1 Mad. 89.**

MADRAS REGULATION I. OF 1805— Jurisdiction of Magistrates.

See **Madras Act III. of 1865. 1.**

REG. *v.* KANDAKORA...**I. L. Rep. 1 Mad. 223.**

—— § 18—*Salt Earth, Collection of.*] The collecting of salt earth from salt swamps, or the being in possession of salt earth, for the purpose of making salt, is not an offence within the meaning of § 18 of Madras Reg. I. of 1805. The case at 4 Mad. H. C. Rep. Appx. 53, overruled. REG. *v.* PYLA ALCHI.....**I. L. Rep. 1 Mad. 278, 1877, F. B.**

MADRAS REGULATION VII. OF 1817.

See **Criminal Breach of Trust. 1.**

ANON.....**I. L. Rep. 1 Mad. 55.**

MAGISTRATE—Mode in which a—should show Cause against a Rule.

See **Mode in which a Magistrate, &c.**

In the matter of the Petition of HURRO SOONDERY CHOWDRAIN.....**I. L. Rep. 4 Cal. 20.**

—— Village Munsiff—Evidence Act I. of 1872, § 26.

See **Village Munsiff. 1.**

Evidence. 23.

Criminal Procedure Code, Act X. of 1872, § 122. 2.

EMPRESS *v.* RAMANJIYA .....**I. L. Rep. 2 Mad. 5.**

MAGISTRATE OF THE DISTRICT—

—— Power of—to Call for Proceedings in Case of Discharge by Subordinate Magistrate.

See **Revival of Prosecution. 5.**

IMPX. *v.* GOWDAPA...**I. L. Rep. 2 Bom. 534.**

—— Power of—to Order Re-trial.

See **Revival of Prosecution. 5.**

IMPX. *v.* GOWDAPA...**I. L. Rep. 2 Bom. 534.**

See **Criminal Procedure Code, Act X. of 1872, § 295. 1.**

DIJABUR DUT...**I. L. Rep. 4 Cal. 647.**

—— Power of—to Proceed without Complaint where Prosecutor has not availed himself of a Sanction to prosecute.

See **Criminal Procedure Code, Act X. of 1872, § 142. 1.**

EMPRESS *v.* NIPCHA...**I. L. Rep. 4 Cal. 712.**

—— Relative Position of—to Magistrate of the First Class, and Sessions Court, for purposes of § 468, Act X. of 1872.

See **Criminal Procedure Code, Act X. of 1872, § 468. 1. 3.**

REG. *v.* PADAMANABHA PAI...**I. L. Rep. 2 Bom. 384.**

GUR DAYAL .....**I. L. Rep. 205.**

MAGISTRATE OF THE FIRST CLASS—Relative Position of—to District Magistrate and Sessions Court.

See **Sanction to Prosecute. 5. 7.**

IMPX. *v.* PADAMANABHA PAI...**I. L. Rep. 2 Bom. 384.**

GUR DAYAL ..**I. L. Rep. 2 All. 205.**

MAGISTRATES IN MADRAS PRESIDENCY—Jurisdiction of—in respect of Offences against Special or Local Laws.

See **Madras Act III. of 1865.**

REG. *v.* KANDAKORA...**I. L. Rep. 1 Mad. 223.**

MAGISTRATE'S NOTES OF EVIDENCE—Affidavits to Supplement—on Application to transfer Case to High Court.

See **High Court Criminal Procedure Act X. of 1875, § 147. 3.**

REG. *v.* HADJEE JEEBUN BUX ..**I. L. Rep. 1 Cal. 354.**

Digitized by Google

MAHALKARI—Sanction to prosecute a—for Fabricating Record of Cases granted by District Magistrate, enough.

See **Sanction to Prosecute. 4.**

IMPX. *v.* LAKSHMAN HARI...**I. L. Rep. 2 Bom. 481.**

MAHOMEDAN FAMILY ADOPTING HINDU CUSTOMS—*Law applicable to.*] A Judge is not bound, as a matter of law, to apply to a Mahomedan family living jointly all the rules and presumptions which have been held by the High Court to apply to a joint Hindu family. When a Mahomedan family adopts the customs of Hindus, it may do so subject to any modification of those customs which the members may consider desirable and it must rest with the Judge who has to decide each particular case how far he should apply the rules of a Hindu joint family to the case of any Mahomedan joint family that comes before him. SUDDURTONNESSA *v.* MAJADA KHATOON. *Markby* and *Prinsep*, JJ...**I. L. Rep. 3 Cal. 694; 2 Cal. Rep. 308, 1878.**

MAHOMEDAN LAW—*Descent—Heir—Representatives—Deceased Debtor—Decree by Consent—Parties—Sale in Execution — Act VIII. of* 1859, § 203—*Act X. of* 1877, § 252.] *B. R.*, a Mahomedan, died possessed of moveable and immoveable property, and leaving a widow, a daughter, and a sister *S.*, his heiresses according to Mahomedan Law. *S.* was as such heiress entitled to a one-sixth share of an undivided moiety of a certain part of the property which was situated in Calcutta. After *B. R.*'s death, the L. Bank sued his daughter and her husband and two of her husband's brothers in a Mofussil Court to realize certain mortgage securities executed by *B. R.* to the bank, and obtained a decree by consent. Neither the widow nor *S.*, who was then absent from the country, were parties to the suit. The bank, in execution of their decree, caused certain property of *B. R.*, including the undivided moiety of the Calcutta property, to be sold by the Sheriff of Calcutta. The defendant became the purchaser at this sale, and obtained possession of the property. The certificate of sale stated that what was sold was "the right, title, and interest of *B. R.*, deceased, the ancestor, and of the defendants (naming them), the representatives, in a moiety of a piece of land situate," &c. *S.* afterwards sold her share in (among other properties) the above-mentioned undivided moiety of the Calcutta property to the plaintiff, who now sued the purchaser at the execution sale to recover the subject of his purchase.

MAHOMEDAN LAW—*contd.*

Held by *Garth*, C.J., *Kemp* and *Jackson*, JJ. (*Markby* and *Ainslie*, JJ., dissenting), that the question whether the decree under which the sale was made to the defendant affected the share of *S.*, who was not a consenting party to it, must be determined by the Mahomedan law, so far as it was ascertainable. By that law an absentee heir is not bound by a decree obtained in a suit brought by a creditor of a deceased debtor against the heir or heirs in whose hands the whole of the property of such deceased debtor may be, unless the proceedings are duly conducted, and the plaintiff's case proved in open Court; and a decree by consent of the heir who is sued is not legally binding on the other heirs; and, therefore, that the decree and execution founded upon it did not affect *S.*'s share in the estate of *B. R.*, and consequently that the property in question did not pass by the sales made by the Sheriff.

Per Markby, J.—Under the Mahomedan law, taking that law as stated in the Hedaya, the estate of an intestate descends entire, together with all the debts due from and owing to the deceased. The creditor of a deceased Mahomedan must enforce his claim against the estate in a suit properly framed for that purpose. Such a suit is properly framed if all persons in possession of that particular portion of the estate which it is intended to charge are made parties to it.

The right of a Mahomedan heir claiming the property of his deceased ancestor, who died indebted, is a right of representation only, and except as representative he has no right to the property whatsoever.

In India, proceedings to recover a debt due by the ancestor, taken against a person who is not the true or sole heir, may nevertheless, under some circumstances, bind the estate; and considering that in this case the parties sued were in possession of the property which was sold, that the property was mortgaged by the ancestor for the very debt sued for, and that the estate was properly and duly applied to the payment of the debt for which it was mortgaged, *S.*, as one of the representatives, was bound by those proceedings just as much as those representatives who were actually parties thereto.

Digitized by Google

MAHOMEDAN LAW—*contd.*

A person may be a representative within the meaning of § 203 of Act VIII. of 1859 (§ 252 of Act X. of 1877), so as to make the decree effectual for the purposes therein stated, although such person is not the heir. ASSAMATHEM NESSA DEBEE *v.* ROY LUTCHMEEPUT SINGH...**I. L. Rep. 4 Cal. 142 ; 2 Cal. Rep 223, 1878, F. B.**

2. —— *Will—Deed of Gift—Presumption of Marriage.*] *D. H.*, a Mahomedan, died in 1841, and *E. H.*, his eldest son, possessed himself of all the property of *D. H.* by virtue of two documents which he set up, a deed of gift and a will, both dated the 18th of November 1839. In 1852, the widow of one of *D. H.*'s younger sons, as guardian and protector of her infant daughter, the respondent, instituted a suit to set aside the deed and the will and to obtain possession on behalf of her daughter of a fourteen-annas share (the daughter's share) of the property of her deceased husband, and she also sued for the other two annas on her own behalf; but after judgment in that suit, and pending an appeal by *E. H.*, she withdrew from the suit on the terms of a compromise filed therein, and to which effect was given by the Sudder Dewanny Adawlut, which dismissed the appeal, and gave a decree in terms of it.

The respondent and her husband, in 1860, filed a suit against *E. H.*, now represented by the appellant, to set aside the compromise, on the ground that she was no party to, and had no knowledge of, the compromise between *E. H.* and her mother, and that it was effected by fraud and collusion on their part; and prayed in substance for a review of the judgment of the Court of first instance so far as it was against her. She also made three further claims, *viz.*, (1) to a share derived by her father from a predeceased brother; (2) to a share in right of her grandmother, whom she alleged to have been a wife of *D. H.*; and (3) that there should be added to the whole property a portion which *E. H.* had recovered by a decree of the Privy Council :—

Held, that the compromise being set aside on the ground of fraud and collusion on the part of *E. H.* and the respondent's mother, the effect was to remit both parties to their original rights, including the right of appeal, and that if the respondent was to be allowed to appeal against so much of the decree of the Court of first instance as was against her, *E. H.* ought also to be heard to appeal against so much of the decision as was against him.

Held also, that if the so-called deed of gift of the 18th of November 1839 was simply a deed of gift without consideration, it was invalid, because there had been no delivery of possession of the property given. If it was to be regarded as a deed of gift for a consideration, then, although according to Mahomedan law a consideration may be perfectly valid which is wholly inadequate in amount when compared with the thing given, yet the whole transaction must be looked to, and an actual payment by the donee of the consideration, and a *bond fide* intention on the part of the donor to divest himself *in præsenti* of the property, and to confer it upon the donee, must appear; but upon the evidence, their Lordships came to the conclusion that the transaction set up on the part of the appellant was not a real one; that no real consideration passed; that there was no real intention on the part of *D. H.* to part with his property at once to his son *E. H.*, but that both father and son were endeavouring to evade the Mahomedan law, by representing that to be a present transfer of property which was intended only to operate after the father's death, the policy of the Mahomedan law being to prevent a testator interfering by will with the course of the devolution of property according to law among his heirs. And though a holder of property may, to a certain extent, defeat that policy by giving in his lifetime the whole or any part of his property to one of his sons, provided he complies with certain forms, it is incumbent on those who seek to set up a proceeding of this sort to show very clearly that the forms of the Mahomedan law, whereby its policy is defeated, have been complied with.

The will having declared *E. H.* the executor and representative of *D. H.*, proceeded :—"I divide the remaining two-thirds now under my possession, uninterfered and unconcerned by any one else, into three portions. One portion to be laid out as the executor may think proper for the testator's welfare hereafter, by charity and pilgrimage, and keep up the family usage, namely, the expenses of the mosque and *taseea-daree* of the sacred martyrs, and for the comfort of the travellers, the surplus amount to be appropriated by himself." Then it went on to say, from the other two-thirds "he shall keep

Digitized by Google

MAHOMEDAN LAW—*contd.*

every one by his good conduct and affection contented and satisfied. It is also necessary for all persons having rights, heirs and friends connected with me, to obey the said executor and consider him my representative." Then further, "none of the heirs have power to sell or divide the landed property mentioned in the will."

Held, that the will in its general scope was in contravention of Mahomedan law. With respect to the limited contention that it might be supported with respect to the devise of a one-third share, it appeared to their Lordships that the devise, considering the vague character of it, and that the beneficial interest was left to *E. H.* after he had devoted what he might deem sufficient to certain indefinite pious uses, was in reality an attempt to give, under colour of a religious bequest, an interest in one-third to *E. H.*, in contravention of Mahomedan law.

It appearing that the son of *L.* had always been treated by *D. H.* and all the members of the family as a legitimate son, a presumption arose that *L.* was *D. H.*'s wife, which was strengthened rather than rebutted by the evidence. RANEE KHUJOOROONISSA *v.* MUSSAMAT ROUSHAN JEHAN...**L. Rep. 3 I. A. 291, 1876; I. L. Rep. 2 Cal. 184.**

MAHOMEDAN LAW — ACKNOWLEDGMENT OF BROTHERHOOD—*A.*, *B.*, and *C.*, Mahomedans of the Shiah sect, the illegitimate sons and daughter of *D.*, a Mahomedan female, by a married Hindu, after the death of D. applied for a certificate under Act XXVII. of 1860, as her sons and daughter, adducing evidence to show that they were the sole children and heirs of *D.*

Held, not to amount to an acknowledgment by *A.* that *B.* was his brother, to all intents and purposes, and as such entitled to inherit his property as his heir. MIRZA HIMMUT BAHADOOR *v.* MUSSAMAT SAHEBZADEE BEGUM.....**L. Rep. 1 I. A. 23; 21 W. R. 113; 13 Beng. L. R. 182, 1873.**

MAHOMEDAN LAW—DIVORCE — *Repudiation by Ambiguous Expression—Custody of Minor Children*] Where a Mahomedan husband said to his wife, when she insisted, against his wish, on leaving his house and going to that of her father, that if she went she was his paternal uncle's daughter, meaning thereby that he would not regard her in any other relationship, and would not receive her back as his wife:—*Held*, that the words used, being spoken with intention, constituted a divorce, under Mahomedan law, which became final if not revoked within the time allowed by that law.

Held also, the divorce having become absolute, the parties being Sunnis, that the husband was not entitled to the custody of his infant daughter until she attained puberty. HAMID ALI *v.* IMTIAZAN. *Pearson* and *Turner*, JJ ..**I. L. Rep. 2 All. 71, 1878.**

MAHOMEDAN LAW—DIVORCE—*ctd.*

2. —— Talak.] The merely pronouncing the word *Talak* three times by the husband, without addressing it to any person, does not constitute a valid divorce under Mahomedan law.

Semble, that a divorce pronounced in due form by a man against a woman who is in fact his wife dissolves the marriage, though he pronounces it under the belief that she is not his wife. FURZUND HOSSEIN *v* JANU BIBEE. *Mitter* and *Maclean*, JJ...**I. L. Rep. 4 Cal. 588, 1878.**

S. C. under **Restitution of Conjugal Rights. 2.**

MAHOMEDAN LAW—DOWER—Right of Widow to follow Estate into Hands of *bona fide* Purchaser for Value from Heir-at-Law.

See **Mahomedan Law—Right of Creditors to follow the Estate of Debtor into the hands of a bona fide Purchaser from the Heir-at-Law.**

SYUD BAZAYET HOSSEIN *v.* DOOLI CHAND ...**L. Rep. 5 I. A. 211; I. L. Rep. 4 Cal. 402.**

1. —— *Prompt and Deferred Dower—Limitation—Demand—Petition for Leave to sue in formâ Pauperis.*] Prompt or exigible dower is a debt always due and demandable, and payable on demand, and, therefore, upon a clear and unambiguous demand and refusal a cause of action would accrue, and the Statute of Limitations commence to run.

An unsuccessful application by a Mahomedan wife for leave to sue her husband *in formâ pauperis* for her dower, though such application is opposed by the husband, who denies his liability to pay the dower, is not such a demand and

Digitized by Google

MAHOMEDAN LAW—DOWER—*contd.*

refusal as to constitute a cause of action. Such application is only a strong expression of an intention to demand her dower by suit, if allowed to do so *in formâ pauperis*, and does not amount to a demand by way of action until she has that permission; and the husband's opposition does not alter the character of the proceedings, or constitute a cause of action, unless the wife had made a previous demand. The option lies with her to demand the dower or not. It is for her to elect the time at which she will do it; and if she has not done it, his opposition, however strongly expressed, would be immaterial. RANEE KHAJOOROONISSA *v.* RANEE RYEESOONISSA...**L. Rep. 2 I. A. 235; 24 W. Rep. 163; 15 Beng. L. R. 306.**

2. —— *Restitution of Conjugal Rights—Prompt and Deferred Dower.*] When a Mahomedan sues his wife for restitution of conjugal rights, such suit must be determined with reference to Mahomedan law. Under that law, if the wife's dower is "prompt," when her husband sues her to enforce his conjugal rights, she is entitled to refuse to cohabit with him until he has paid her dower, and that notwithstanding she may have left his house without demanding her dower, and only demands it when he sues, and notwithstanding also that she and her husband may have already cohabited with consent since their marriage. *Abdool Shakkour* v. *Raheemoonissa* (H. C. Rep. N. W. P., 1874, p. 94) followed. When at the time of the marriage the payment of the dower has not been stipulated to be "deferred," payment of a portion of the dower must be considered "prompt." The amount of such portion is to be determined with reference to custom. Where there is no custom, it must be determined by the Court, with reference to the *status* of the wife and the amount of the fixed dower.

Where a Court, following this rule, determined that one-fifth only of a dower of Rs. 5,000 not stipulated to be deferred must be considered "prompt," inasmuch as the wife had been a prostitute and came of a family of prostitutes, it was *held*, that its discretion had been soundly exercised. EIDAN *v.* MAZHAR HUSAIN. *Stuart*, C.J, and *Pearson*, J.. **I. L. Rep. 1 All. 483, 1877.**

3. ——*Prompt and Deferred Dower—Custom.*] In a suit to recover Rs. 25,000 out of Rs. 51,000 due to the plaintiff as dower, the plaintiff alleged

MAHOMEDAN LAW—DOWER—*contd.*

that as it was not specified at the time of marriage that the dower was "deferred," it must be considered "prompt." The Court of first instance dismissed the claim, holding that in the absence of any specification whether the dower was "prompt" or deferred," it was necessary to refer to custom to determine the nature of the dower, and that according to the custom obtaining in such cases in the district from which this case came, the dower must be considered to be "deferred." On appeal, the High Court said:—

"This judgment cannot be supported. The law on the point is stated in Baillie's Digest from the *Fatawa Kasee Khan*, which has been followed by this Court in recent decisions—*Eidan* v. *Mashar Husain* (I. L. Rep. 1 All. 483); *Habib un-Nissa* v. *Nisam-ud-Din*, decided the 31st July 1877. When nothing has been said as to the character of the dower, the Court may determine the amount to be considered prompt with reference to the position of the woman, and the amount of the dower named in the contract, taking into consideration at the same time what is customary. The reference to custom appears to be in respect of the proportion to be held 'prompt,' and it does not appear to have contemplated to refer to custom to describe whether or not the entire dower should be 'deferred.' We have been shown a translation of an extract from *Jami-ur-Rumuz*, a commentary on *Mukhtasar Vakaya*, which will, however, bear another construction. However this may be, we do not concur with the Subordinate Judge in holding that any custom is proved by which the entire dower is considered 'deferred.'" TAUFIK-UN-NISSA *v.* GHULAM KAMBAR. *Pearson* and *Oldfield*, JJ...**I. L. Rep. 1 All. 506, 1877.**

MAHOMEDAN LAW—EMANCIPATOR OF SLAVE—Heritable Rights of.

See **Act V. of 1843.**

SAYAD MIR UJMUDIN KHAN *v.* ZIA-UL-NISSA BEGUM...**L. Rep. 6 I. A. 137; I. L. Rep. 3 Bom. 422.**

MAHOMEDAN LAW—GIFT.

See **Mahomedan Law. 2.**

RANEE KHUJOOROONISSA *v.* MUSST. ROUSHAN JEHAN...**L. Rep. 3 I. A. 291.**

1. —— *Gift of Defined Share*—Mushá.] A defined share in a landed estate is a separate property, to the gift of which the objection which

Digitized by Google

MAHOMEDAN LAW—GIFT—*contd.*

attaches under Mahomedan law to the gift of joint and undivided property does not apply. JIWAN BAKSH *v.* IMTIAZ BEGAM. *Pearson* and *Spankie*, JJ.....I. L. Rep. 2 All. 93, 1878.

2. —— *Gift of* Mushâ — *Gift of Definite Share of Zemindaries —Gift by a Guardian to a Minor—Possession —Secondary Evidence—Procedure — Issues — Reg. XXVI. of* 1793, § 2.] A Mahomedan father was alleged to have executed, first, in January 1848, in favour of his infant son, a *hibbanamah*, or deed of gift, of the office of Mutwalee of a certain shrine, together with the endowed lands appurtenant thereto ; second, in October 1849, a *hibbanamah* to the same son of a ten-annas share in certain zemindaries. The mother was also alleged to have executed in June 1851, to the same son, a *hibbanamah* (reciting the acknowledgment thereof by the father as guardian of the infant) of certain shares of other properties. In March 1853, the said infant executed an *ikrarnamah* to his father reciting the previous gift to him by his father, of October 1849, and treating it as *bonâ fide* and operative, undertaking to make certain provision for his half-brothers and sisters that might be born in future, out of the proceeds of the property received by him in gift, and to share it equally with any full brothers that might be born, and to make the latter compensation for a portion of the property given to him which had been settled on his wife, and declaring that so long as there was a possibility of brothers and sisters being born to the plaintiff, he should have no power of alienation, and that the father should during his lifetime have the charge, management, and control of the entire property. On the same day, the said infant executed to his mother an *ikrar* of a like purport as regarded her *hibba*. In December 1856, having attained his majority, he executed a third *ikrar* reciting the execution and purport of the second and third deeds of gift, and in effect confirming the previous *ikrars*, and granting certain allowances out of the properties.

In a suit by the son to set aside the three *ikrars* as forged, and for possession with mesne profits of the properties the subject of the three *hibbanamahs* :—

Held, with regard to the first deed of gift, the original of which was not produced, but only a copy from the Registry, that such copy was inadmissible in evidence, as neither of the two conditions required to make such copy statutory evidence of the deed by virtue of Reg. XX. of 1812, § 2, Cl. 5, had been complied with. It was not shown that the original was "lost, destroyed, or not forthcoming," nor was there any proof by any of the subscribing witnesses that the original had been duly executed.

Held further (finding the three *ikrars* alleged to be executed by the son were genuine documents), that the rights of the parties must be determined on the basis of the combined operation of the *hibbas* and *ikrars*. The father who set up in his defence to the suit these *ikrars* as valid instruments, could not be allowed to aver that the *hibbas* to which they related were intended to have no operation and effect ; but the *hibbanamahs*, read, as they should be, by the light of the *ikrars*, showed that pure and absolute gifts of the property were not intended. The High Court, having found the earlier of the two *ikrars* to be genuine (although it held the third and confirmatory *ikrar* not to be proved), was wrong in declining to give effect to them on the grounds that the son was a minor, and that they were obtained under undue influence, —neither the plaint nor the issues distinctly raising those points, and the evidence not having been directed to them.

Semble, that as regards the two earlier *ikrars*, the son must, for the purposes of Reg. XXVI. of 1793, § 2, be assumed to be the proprietor of the revenue-paying estates referred to in them, and not having, at the time of their execution, reached the age of eighteen (the age fixed by that Regulation for the minority of Mahomedan proprietors of estates paying revenue to Government), the period of his minority would be governed by that Regulation ; but, however that might be, the third *ikrar* was executed after he had atained the full age of eighteen, and, being found to be genuine, confirmed and gave effect to the two former ones, which must be construed with it. The rights of the parties ought, therefore, to be governed by the provisions contained in the two latter *hibbas* and the *ikrars* read and construed as a whole. No declaration, however, to that effect could be made, or any relief granted, in the present suit, having regard to its form and to the prayer of the plaint.

Under Mahomedan law, where there is, on the part of a father or other guardian, a real and

Digitized by Google

MAHOMEDAN LAW—GIFT—*contd.*

bonâ fide intention to make a gift, the law will be satisfied without change of possession, and will presume the subsequent holding of the property to be on behalf of the minor. The rule of Mahomedan law, that a gift of *Musha*, or an undivided part in property capable of partition, is invalid, does not apply to the case of a gift of definite shares in zemindaries, which are in their nature separate estates, with separate and defined rents, the nature of the right in them being defined and regulated by public Acts of the British Government, rendering such shares, even before partition of the land, definite estates, capable of distinct enjoyment by perception of the separate and defined rents belonging to them. AMEEROONISSA KHATOON *v.* ABEDOONISSA KHATOON... **L. Rep. 2 I. A. 87; 15 Beng. L. R. 67; 23 W. R. 208, 1874.**

MAHOMEDAN LAW — GUARDIAN—*Legal Guardian—Custody of Minor—Sister—Prostitute.*] Where the plaintiff sued for the custody of her minor sister, as her legal guardian under Mahomedan law :—

Held, that the fact that the plaintiff was a prostitute was, although under Mahomedan law she would be *prima facie*, entitled to the guardianship of her minor sister, sufficient to disqualify her, and a sufficient reason for dismissing her suit. ABASI *v.* DUNNE. *Stuart*, C.J., and *Pearson*, J.....**I. L. Rep. 1 All. 598, 1878.**

MAHOMEDAN LAW—HUSBAND AND WIFE—Right of Wife to resist Suit for Restitution of Conjugal Rights till Payment of her Dower.

See **Mahomedan Law—Dower. 2.**

EIDAN *v.* NAZHAR HUSAIN...**I. L. Rep. 1 All. 483.**

MAHOMEDAN LAW — INFANT—Sale by Guardian when binding on.

See **Mahomedan Law—Sale by Guardian.**

HASAN ALI *v.* MEHDI HUSAIN ..**I. L. Rep. 1 All. 538.**

1. —— *Inheritance—Sale by Widow in Discharge of Debts —Minor, when bound by.*] The plaintiff sued to obtain possession, by right of inheritance, of a share of certain property forming part of the real estate of her deceased father, which had been sold by two of his widows to satisfy decrees obtained against them by creditors

MAHOMEDAN LAW—INFANT—*contd.*

of the plaintiff's deceased father, as his representatives. The plaintiff was not the daughter of either of the two widows so sued, but of a third widow of the deceased, and was, at the time of the sale, living with and supported by her mother, and had no legal guardian at that time. The deed of sale stated that the plaintiff was in possession, and was executed by the two widows, on behalf of themselves, and as guardian of the minor children of their deceased husband. It did not appear that the plaintiff was a party to the suits by the creditors, nor whether the decrees were obtained on the confession of the defendants in them, or after proof of the debts :—

Held, that if the minor was in possession, and was not a party to, or properly represented in, the suits in which the creditors obtained decrees, she was not bound by the decrees, nor by the sale subsequently effected to satisfy them, and was entitled to recover her share, but contingent on the payment by her of her share of the debts, for the satisfaction of which the sale was effected. HAMIR SINGH *v.* MUSAMAT ZAKIA.....**I. L. Rep. 1 All. 57, 1875, F.B.**

MAHOMEDAN LAW — INHERITANCE — MISSING PERSON — Presumption as to Death.

See **Evidence. 21.**

PARMESHAR RAI *v.* BISHESHAR SINGH.....**I. L. Rep. 1 All. 53.**

MAHOMEDAN LAW—INHERITANCE —RETURN—*Widow's Rights.*] By the Mahomedan law of inheritance, in default of other sharers and in the absence of distant kindred, the widow is entitled to the "return," to the exclusion of the fisc. MAHOMED ARSHAD CHOWDHRY *v.* SAJIDA BANOO. *Kemp* and *Morris*, JJ **I. L. Rep. 3 Cal. 702; 2 Cal. Rep. 46, 1878.**

MAHOMEDAN LAW—KAZI—Appointment of Hereditary Kazi—Regulation XXVI. of 1827—Custom.

See **Kazi. 1. 2.**

JAMAL *v.* JAMAL.....**I. L. Rep. 1 Bom. 633.**

DAUDSHA *v.* ISMAILSHA.....**I. L. Rep. 3 Bom. 72.**

Digitized by Google

MAHOMEDAN LAW—PRE-EMPTION.

See **Pre-emption.**

—— Claim of Right of—not excluded by Claim of Right to pre-emption founded on Special Agreement.

See **Pre-emption. 12.**

MARATIB ALI *v.* ABDUL HAKIM... **I. L. Rep. 1 All. 567.**

—— Where Vendor a Hindu does not apply.

See **Pre-emption. 11.**

DWARKA DAS *v* HUSAIN BAKSH... **I. L. Rep. 1 All. 564.**

—— *Coparceners.*] By Mahomedan law one coparcener has no right of pre-emption as against another coparcener. *Moheshur Lal* v. *Christian* (6 W. Rep. 250) and *Teeka Dharee Singh* v. *Mohur Singh* (7 W. Rep. 260) followed; *Roshun Mahomed* v. *Mahomed Kuleen* (7 W. Rep. 150) distinguished. LALLA NOWBUT LALL *v.* LALLA JEWAN LALL...**I. L. Rep. 4 Cal. 831; 2 Cal. Rep. 319, 1878, F. B.**

2. —— *Claim by Agent—Refusal to purchase before Sale.*] Under Mahomedan law, the legal forms required by that law by a person claiming a right of pre-emption may be observed on behalf of such person by an agent or manager, *e.g.*, the husband, of such person. The right of pre-emption is void if the pre-emptor relinquishes the purchase in plain terms, and any indication or acquiescence in the sale to another would also vitiate a claim after the sale on the part of the pre-emptive claimant. But a claim relinquished on misinformation of the amount of sale consideration, or of the property sold, may be resumed when the real facts become apparent. A refusal to purchase before the actual completion of a sale to another does not in all cases bar a subsequent claim, when the right of pre-emption accrues after the completion of the purchase. Thus, where there has been no absolute surrender or relinquishment of the claim, but where the refusal was simply in consequence of a dispute as to the actual sale consideration, and where the refusal does not go beyond a refusal to purchase at the rate demanded by the vendor, on the ground that the actual sale price was less than that demanded from the pre-emptor, the right of pre-emption after the completion of a purchase by a stranger would not be lost. ABADI BEGAM *v.* INAM BEGAM. *Spankie* and *Oldfield*, JJ...**I. L. Rep. 1 All. 521, 1877.**

MAHOMEDAN LAW—PRE-EMPTION —*contd*

3. —— *Sale of House.*] Where a dwelling-house was sold as a house to be inhabited as it stood, with the same right of occupation as the vendor enjoyed, but without the ownership of the site:—*Held*, that a right of pre-emption under Mahomedan law attached to such house. ZAHUR *v.* NUR ALI. *Pearson* and *Turner*, JJ... **I. L. Rep. 2 All. 99, 1879.**

MAHOMEDAN LAW—RESTITUTION OF CONJUGAL RIGHTS.

See **Mahomedan Law—Dower. 2.**

EIDAN *v.* MAZHAR HUSAIN...**I. L. Rep. 1 All. 483.**

MAHOMEDAN LAW—RETURN.

See **Mahomedan Law — Inheritance—Return. 1.**

MAHOMED ARSHAD CHOWDHRY *v.* SAJIDA BANOO...**I. L. Rep. 3 Cal. 702.**

MAHOMEDAN LAW—RIGHT OF CREDITORS TO FOLLOW THE ESTATE OF DEBTOR INTO THE HANDS OF A PURCHASER FROM THE HEIR—*Alienation by Heir-at-Law* — Lis pendens.] The creditors of a deceased Mahomedan, whether in respect of dower or otherwise, cannot follow his estate into the hands of a *bonâ fide* purchaser for value to whom it has been alienated by the heir-at-law, whether by sale or mortgage. *Mussumut Wahidunnissa* v. *Mussumut Shabratton* (6 Beng. L. Rep. 54) approved. But where the alienation is made during the pendency of a suit in which the creditor obtains a decree for the payment of his debt out of the assets of the estate which have come into the hands of the heir-at-law, the alienee will be held to take with notice, and be affected by the doctrine of *lis pendens*. SYUD BAZAYET HOSSEIN *v.* DOOLI CHAND...**I. L. Rep. 4 Cal. 402, 1878, P. C.; S. C. L. Rep. 5 I. A. 211.**

MAHOMEDAN LAW — SALE BY GUARDIAN—*Minors when bound by—Special Appeal.*] *H.*, being in possession of certain real property on her own account and on account of the plaintiffs, her nephew and niece, minors, of whose persons and property she had assumed charge in the capacity of guardian, sold in 1862 the property in good faith, and for valuable consideration, to liquidate ancestral debts, and for other necessary family purposes and wants

Digitized by Google

MAHOMEDAN LAW — SALE BY GUARDIAN—*contd.*

for herself and the minors. In a suit brought by the plaintiffs to cancel the sales :—

Held, that even if the plea that *H.* was not the legal guardian of the plaintiffs when she made the sales was good such plea could not be taken for the first time in special appeal.

Held also, that the discharge of the ancestral debts being a matter of necessity, and the rights of the heirs connected with the estate on the sole condition of its being free from incumbrance, the plaintiffs were bound by the sales bothunder Mahomedan law and the principles of justice, equity, and good conscience. HASAN ALI *v.* MEHDI HUSAIN. *Spankie* and *Oldfield*, JJ..... **I. L. Rep. 1 All. 533, 1877.**

See the Cases under **Alienation by Guardian.**

See **Mortgage. 29. 30.**

See **Sale by Guardian.**

See **Review. 10.**

MAHOMEDAN LAW — SLAVERY — Willa—Heritable Rights of Slave Emancipator.

See **Act V. of 1843.**

SAYAD MIR UJMUDDIN KHAN *v.* ZIA-UL-NISSA BEGAM.....**L. Rep. 6 I. A. 137; I. L. Rep. 3 Bom. 422.**

MAHOMEDAN LAW—WAKF — Mutuwalli—*Survivorship—Right to sue.*] A Mahomedan of the Shafi sect, by a deed of settlement executed in 1838, called a *wakfnama*, settled moieties of his estate on his two wives, their daughters, and the descendants of the donees in each line, so long as it should exist, with cross-remainders, on the extinction of either line, to the representatives of the other, with final remainders, on the extinction of both, to the heirs of the settlor. The settlor constituted himself the *nazir* or *mutuwalli* of his estate during his life, and nominated *A.* and *B.* to act as such after his death with the consent of his wives. The settlor died in 1840; *A* died in 1865; *B* survived. The wives and daughters of the settlor also died.

The representatives of one of the daughters sued the defendant to recover a part of the estate, which had been sold to him by the Civil Court, as the property of another of the daughters, on the ground that the estate on the death

MOHAMEDAN LAW—WAKF—*contd.*

of that daughter passed as *wakf* to her surviving sister.

Held, that assuming the *wakf* to have validly created, the right to bring the suit belonged (according to Mahomedan law) not to the heirs or descendants of the settlor, but to the *mutuwallis* jointly. On the death of one of the *mutuwallis*, a successor should have been appointed in the first place by the settlor, and failing him, by his executor, if he had appointed one; if he had named no executor, the appointment rests with the Court to whom the parties interested beneficially should have applied to fill the vacant office.

Quære—Whether a *wakf* could be created for the purpose merely of conferring a perpetual and inalienable estate on a particular family, without any ultimate express limitation to the use of the poor, or some other inextinguishable class of beneficiaries. PHATE SAHEB BIBI *v.* DAMODAR PREMJI. *West* and *Pinhey*, JJ...**I. L. Rep. 3 Bom. 84, 1879.**

MAHOMEDAN LAW—WILL.

See **Mahomedan Law. 2.**

RANEE KHUJOOROONISSA *v.* MUSST. ROUSHAN JEHAN...**L. Rep. 3 I. A. 291.**

MAHOMEDAN LAW—WILLA—Heritable Rights of Emancipator of Slave.

See **Act V. of 1843.**

SAYAD MIR UJMUDIN KHAN *v.* ZIA-UL-NISSA BEGAM.....**L Rep. 6 I. A. 137; I. L. Rep. 3 Bom. 422.**

MAHOMEDAN WIDOW—Right of—to the Return.

See **Mahomedan Law — Inheritance—Return. 1.**

MAHOMED ARSHAD CHOWDHRY *v.* SAJIDA BANOO...**I. L. Rep. 3 Cal. 702.**

MAINTENANCE.

See the Cases under **Champerty.**

—— *Ordered by Magistrate—Act X. of* 1872, *Ch.* xli.—*Custody of Illegitimate Child.*] The provisions of Chapter XLI. of the Criminal Procedure Code (Act X. of 1872) do not enable a Magistrate to determine the question who is the lawful guardian of a child, but only to make an order for the maintenance of a wife or child

Digitized by Google

MAINTENANCE—*contd.*

on its appearing, to the satisfaction of the Court that the husband or father has neglected or refused to do so, though possessed of sufficient means.

There is nothing in the Code which warrants a Magistrate ordering a mother to surrender an illegitimate child to the father; and her refusal to surrender it is no ground for stopping an allowance previously ordered. LALL DAS *v.* NEKUNJO BHAISHIANI. *Ainslie* and *Broughton*, JJ.....**I. L. Rep. 4 Cal. 374, 1878.**

MAINTENANCE OF BUND—*Prescriptive Right—Escape of Water—Injury to Neighbouring Property*—Vis major.] Where the defendant had acquired a prescriptive right to maintain a bund on his own land, and thereby pen back the waters of a natural stream flowing through it, and there was nothing to show that, by agreement or otherwise, the accumulation of water was limited to a certain quantity; or that when the water rose to a certain height, the defendant or the plaintiff, whose land adjoined the defendant's, was bound or entitled to open a passage for the surplus water; and where the defendant was not shown to have failed in making proper provisions for dealing with such quantities of water as might reasonably be expected to accumulate:—

Held, that the defendant was not liable for damage caused to the plaintiff's land by the escape or overflow of water caused by an unusual inundation. RAM LALL SINGH *v.* LILL DHARY MUHTON. *Ainslie* and *Lawford*, JJ... **I. L. Rep. 3 Cal. 776, 1877.**

MAINTENANCE OF ILLEGITIMATE SON.

See the Cases under **Hindu Law—Maintenance of Illegitimate Son.**

—— Adulterous Offspring of Sudra entitled to —but not to inherit.

See **Hindu Law — Inheritance — Illegitimate Son. 4. 5. 6.**

And **Hindu Law—Maintenance of Illegitimate Son. 1.**

RAHI *v.* GOVIND...**I. L. Rep. 1 Bom. 97.**

NARAYAN *v.* LAVING...**I. L. Rep. 2 Bom. 140.**

VIRAMUTHI *v.* SINGARAVELU....**I. L. Rep. 1 Mad. 306.**

MAINTENANCE OF ILLEGITIMATE SON—*contd.*

—— Alienation of Ancestral Estate for.

See **Hindu Law — Maintenance of Illegitimate Son. 3.**

RAJAH PARICHAT *v.* ZALIM SINGH. **L. Rep. 4 I. A. 159.**

—— Assignment of Ancestral Property for.

See **Hindu Law — Maintenance of Illegitimate Son. 3.**

RAJAH PARICHAT *v.* ZALIM SINGH. **L. Rep. 4 I. A. 159; I. L. Rep. 3 Cal. 214.**

MAINTENANCE OF SON.

See **Hindu Law — Maintenance of Son. 1. 2.**

RAMCHANDRA *v.* SAKHARAM...**I. L. Rep. 2 Bom. 346.**

SAVITRIBAI *v.* LAXMIBAI...**Ibid. 573-590.**

MAINTENANCE OF WIDOW.

See **Hindu Law — Maintenance of Widow.**

—— Amount of—Circumstances to be considered in fixing.

See **Hindu Law — Maintenance of Widow. 5. 18.**

SREEMUTTY NITTOKISSOREE *v.* JOGENDRO NAUTH...**L. Rep. 5 I. A. 55.**

NARHAR SINGH *v.* DIRGNATH KUAR .....**I. L. Rep. 2 All. 407.**

—— Daughter-in-Law, Right of, to.

See **Hindu Law — Maintenance of Widow. 8.**

GANGA BAI *v.* SITA RAM...**I. L. Rep. 1 All. 170.**

—— Gift by Husband of all his Estate—Liability of Donee for—of Donor.

See **Hindu Law — Maintenance of Widow. 17.**

JAMNA *v.* MACHUL SAHU...**I. L. Rep. 2 All. 315.**

—— Grant in lieu of—Resumption—Limitation.

See **Limitation. 8.**

PETAMBER BABOO *v.* NILMONY SINGH...**I. L. Rep. 3 Cal. 793.**

Digitized by Google

MAINTENANCE OF WIDOW—*contd.*

—— Grant of Money in lieu of—Alienation by Will of Lands purchased with—Valid.

See **Hindu Law—Alienation by Widow. 4.**

And **Hindu Law—Will. 8.**

NELLAIKUMARU *v.* MARAKATHAMMAL.....**I. L. Rep. 1 Mad. 166.**

—— Limitation to Suit for.

See **Hindu Law—Maintenance of Widow. 4. 6.**

KRISHNA MOHUN *v.* OKHILOMINI. **I. L. Rep. 3 Cal. 331.**

JIVI *v.* RAMJI...**I. L. Rep. 3 Bom. 207.**

See **Limitation. 33.**

KULO *v.* LAKSHMIBAI...**I. L. Rep. 2 Bom. 637.**

—— Limitation to Suit for—and Arrears under a Will creating no Charge on the Inheritance of Testator's Estate.

See **Limitation. 32.**

NARAYANRAV *v.* RAMABAI ... **L. Rep. 6 I. A. 114.**

—— Multiplicity of Suits for.

See **Multiplicity of Suits.**

LAKSHMAN *v.* SATYABHAMABAI...**I. L. Rep. 2 Bom. 494, 497.**

SIDLINGAPA *v.* SIDAVA.....**Ibid. 624, 630.**

—— Purchaser *bonâ fide* without Notice of claim for.

See **Hindu Law—Maintenance of Widow. 1. 13.**

ADHIRANEE NARAIN *v.* SHONA MALEE...**I. L. Rep. 1 Cal. 365.**

LAKSHMAN *v.* SATYABHAMABAI...**I. L. Rep. 2 Bom. 494.**

—— Resumption of Grant in lieu of—Limitation.

See **Limitation. 8.**

PETAMBER BABOO *v.* NILMONY SINGH...**I. L. Rep. 3 Cal. 793.**

MAINTENANCE OF WIDOW—*contd.*

—— Right of Hindu Widow to Separate Maintenance—Arrears of Separate.

See **Hindu Law—Maintenance of Widow. 2. 3. 7.**

RANGO VINAYAK *v.* YAMUNABAI... **I. L. Rep. 3 Bom. 44.**

KASTURBAI *v.* SHIVAJIRAM DEVKURUN .....**Ibid. 372.**

NARAYANRAV *v.* RAMÁBAI...**L. Rep. 6 I. A. 114; I. L. Rep. 3 Bom. 415.**

—— Right to—Accrues according to her Wants and Exigencies—Separate Residence of Widow no Bar to Right.

See **Hindu Law—Maintenance of Widow. 7.**

NARAYANRAV *v.* RAMABAI.....**L. Rep. 6 I. A. 114; I. L. Rep. 3 Bom. 415.**

—— Separate Residence of Widow not generally Bar to Right of.

See **Hindu Law—Maintenance of Widow. 7.**

NARAYANRAV *v.* RAMABAI.....**L. Rep. 6 I. A. 114; I. L. Rep. 3 Bom. 415.**

—— Suit on Decree for.

See **Multiplicity of Suits. 1. 2.**

SIDLINGAPA *v.* SIDAVA.....**I. L. Rep. 2 Bom. 624, 630.**

LAKSHMAN *v.* SATYABHAMABAI...**I. L. Rep. 2 Bom. 624.**

—— Suit for Reduction of.

See **Hindu Law—Maintenance of Widow. 10.**

RUHA BAI *v.* GAUDA BAI...**I. L. Rep. 1 All. 594.**

See **Multiplicity of Suits. 2.**

SIDLINGAPA *v.* SIDAVA.....**I. L. Rep. 2 Bom. 624, 630.**

MAINTENANCE OF WIFE—Separate.

See **Hindu Law—Maintenance of Wife. 1. 2. 3.**

CASTURBBAI *v.* SHIVAJIRAM...**I. L. Rep. 3 Bom. 372, 382.**

SIDLINGAPA *v.* SIDAVA.....**I. L. Rep. 2 Bom. 624, 634.**

Digitized by Google

MAJORITY—Age of—for Hindus Domiciled and Resident in Calcutta.

See **Age of Majority.**

MOTHOORMOHUN *v.* SOORENDRO...
I. L. Rep. 1 Cal. 108.

MAJORITY ACT IX. OF 1875—§ 3—*Minor—Guardian* ad Litem.] The appointment of a guardian *ad litem* is sufficient to make the minor party subject to § 3 of Act IX. of 1875, and to constitute his period of majority at twenty-one, at any rate so far as relates to the property in suit, notwithstanding that such minor would, but for such appointment, have attained majority at the age of eighteen. SUTYYA GHOSAL *v.* SUTTYANUND GHOSAL. *Pontifex*, J.
I. L. Rep. 1 Cal. 388, 1876.

MALABAR LAW—Lands acquired by Member of Malabar Tárwád.

See **Declaratory Decree. 10.**

CHANDU *v.* CHATHU NAMBIAR...I. L. Rep. 1 Mad. 381.

1. —— *Alienability of* "Sthanam" *Lands.*] Lands attached to the "*Sthanam*" of Sthanamdars in Malabar, are, unless the contrary be specifically proved in any particular case, liable to alienation and charge at all events for the payment of debts incurred for the conservation of the sthanam. CHEMINIKARA M. NAIR *v.* KILYANANT U. MENON. *Morgan*, C. J., and *Holloway*, J.....I. L. Rep. 1 Mad. 88, 1876.

2. —— *Removal of* Karanavan *from Office.*] In such a state of property and family relations as that of Malabar, there must be a constant conflict of interest with duty. This, however, throws upon the Courts, in case of such conflict, the duty of checking acts referable to interest of that character, but does not justify the treatment of the *karanavan* as a mere trustee, officer of a corporation, or other person in a similar position. The person to whom a karanavan bears the closest resemblance is the father of a Hindu family. Like him, his situation at the head of the family comes to him by birth. He should not be removed from his office except on the most cogent ground. The office is not one conferred by contract, but is the offspring of his natural condition.

In considering whether a karanavan should be removed from his office, the question is not merely whether he is unworthy of that office, for that would be no ground for removing him,

MALABAR LAW—*contd.*

but whether his removal will benefit the family. The state of families and property in Malabar will always create difficulties; and their solution will not be assisted by bringing in the anarchy and insecurity which will always follow upon any attempt to weaken the natural authority of the karanavan.

Where, therefore, a karanavan was found to have made perpetual grants of certain lands belonging to his *tárwád* for other than family purposes, and to have made demises of certain other lands belonging to his tárwád for unusual periods on no justifiable grounds:—

Held, that this did not constitute sufficient ground for his removal from office, his conduct not having been such as to show that he could not be retained in his position without serious risk to the interests of the family. ERAVANI REVIVARMAN *v.* ITTAPU REVIVARMAN. *Morgan*, C.J., and *Holloway*, J...I. L. Rep. 1 Mad. 153, 1876.

3. —— *Right of Karanavan to revoke Authority of Anandravan — Tárwád Property.*] The plaintiffs, the karanavan and senior anandravan of a certain tárwád, sued to recover from the defendant, their anandravan, certain tárwád property alleged to have been made over to him in 1866 by the plaintiffs' former karanavans, *G.* and *C.*, on the defendant's agreeing to collect the rents, pay the revenue, maintain his branch of the family, and render yearly accounts. The plaintiffs stated that after the death of *G.* and *C.*, the first plaintiff in 1871-72 permitted the defendant to continue in possession on the same terms, but that the defendant had since 1873 refused to render accounts. The defendant pleaded, but in the opinion of the lower Appellate Court failed to prove, that there had been a division of the tárwád between *G.* and *C.*, and that the plaintiff and defendant respectively were their representatives. And the lower Appellate Court held that the first plaintiff was by succession to the karanavasthanam entitled to the return of the tárwád properties to his management, and was not bound by the arrangements of prior karanavans, and might revoke any permission given by him, express or tacit, to the defendant to manage any of the tárwád properties:—

Held, on special appeal, that upon the findings of the lower Appellate Court, the defendant's position was simply that of an agent or manager of a portion of the family property, and that it

Digitized by Google

MALABAR LAW—*contd.*

was competent to the family, as represented by the karanavan and senior anandravan, the plaintiff in this suit, at any time to revoke that agency, and require that the property so in the defendant's control and management be replaced under the karanavan. GOVINDAN *v.* KANNAVAN. *Innes* and *Kindersley*, JJ...**I. L. Rep. 1 Mad. 351, 1878.**

MALICE.

See **Act XVIII. of 1850. 2.**

COLLECTOR OF SEA CUSTOMS, MADRAS, *v.* PUNNIAR CHITHAMBARAM .....**I. L. Rep. 1 Mad. 89.**

—— Action for Costs for improperly Putting the Law in Motion.

See **Champerty. 2.**

RAM COOMAR *v.* CHUNDER CANTO. **L. Rep. 4 I. A. 28 ; I. L. Rep. 2 Cal. 233.**

—— Arrest—*Ex parte* Decree—Want of Reasonable and Probable Cause.

See **Damages. 4.**

RAJ CHUNDER *v.* SHAMA SOONDERI. **I. L. Rep. 4 Cal. 583.**

MALIKANA—Talookdar's Right to.

See **Act I. of 1869. 2. 4.**

WIDOW OF SHUNKUR SAHAI *v.* RAJAH KASHI PERSHAD...**L. Rep. 4 I. A. 198, n.**

GOURI SHUNKER *v.* MAHARAJAH OF BULRAMPORE...**L. Rep. 6. I. A. 1 ; I. L. Rep. 4 Cal. 839.**

MALIKANA RIGHTS PAYABLE FOR EVER—Attachment of.

See **Execution of Decree. 10.**

NILKUNTO *v.* HURRO SOONDEREE... **I. L. Rep. 3 Cal. 414.**

MAMLATDAR—Order of—under Bombay Act V. of 1864.

See **Bombay Act V. of 1864.**

BASAPPA *v.* LAKSHMAPPA...**I. L. Rep. 1 Bom. 624.**

MANAGEMENT OF PAGODA—Alienation of the Right of.

See **Alienation of the Right of Management of a Pagoda.**

RAJAH VURMAH VALIA *v.* RAVI VURMAH MUTHA...**L. Rep. 4 I. A. 76.**

MANAGEMENT OF A RELIGIOUS ENDOWMENT, SUIT FOR.

See **Suit for Management of a Religious Endowment.**

PANCHCOWRIE MULL *v.* CHUNNOOLALL...**I. L. Rep. 3 Cal. 563.**

MANAGER—Appointment of—on Decree on Mortgage.

See **Civil Procedure Code, Act VIII. of 1859, § 243. 1.**

WOMDA KHANUM *v.* RAJROOP KOER.....**I. L. Rep. 3 Cal. 335.**

—— *Attachment—Act VIII. of* 1859, § 243.] The appointment of a Surbarakur or manager under § 243, Act VIII. of 1859, by a Court does not supersede an attachment.

BUNWAREE LALL SAHOO *v.* MOHABEER PROSHAD SINGH.....**L. Rep. 1 I. A. 89 ; 12 Beng. L. R. 297, 1873 ;** S. C. under **Act XI. of 1859.**

MANAGER APPOINTED BY COURT, POWER OF—Act VIII. of 1859, § 243.

See **Mortgage. 23.**

MORAN *v.* MITTU BIBEE.....**I. L. Rep. 2 Cal. 58.**

MANAGER OF HINDU UNDIVIDED FAMILY—Authority of.

See **Hindu Law—Manager.**

KUMARASAMI *v.* BALA NAGAPPA... **I. L. Rep. 1 Mad. 385.**

—— Debts Incurred by—in carrying on Joint Ancestral Trade—Power of—to pledge Joint Ancestral Property—Insolvency—Title of Official Assignee.

See **Hindu Law—Maintenance of Widow. 9.**

JOHURRA BIBEE *v.* SREEGOPAL MISSER...**I. L. Rep. 1 Cal. 470.**

See **Hindu Law—Ancestral Trade.**

JOYKISTO COWAR *v.* NITTYANUND NUNDY...**I. L. Rep. 3 Cal. 738.**

—— Purchase by—in his own Name, but for the Family at Revenue Sale.

See **Act I. of 1845, § 21.**

TOONDUN SINGH *v.* POKHNARAIN SINGH...**L. Rep. 1 I. A. 342.**

Digitized by Google

MANAGER OF LUNATIC'S ESTATE— Appointment of.

See **Act XXXV. of 1858, § 9.**

MANOHAR LAL *v.* GAURI SHANKAR...**I. L. Rep. 1 All. 476.**

MANAGER OF WEST INDIA ESTATES, LIEN OF.

See **Mortgage. 22.**

MORAN *v.* MITTU BIBEE.....**I. L. Rep. 2 Cal. 58.**

MANDAMUS.

See **High Court Criminal Procedure Act X. of 1875, § 147. 1.**

MALCOLM *v.* GASPER...**I. L. Rep. 2 Cal. 278.**

MANDATORY INJUNCTION— *Ancient Lights—Obstruction—Notice—Delay—Acquiescence—Damages—Demolition of Building.*] The defendants having pulled down their house, proceeded to re-erect it, notwithstanding notice from the plaintiff not to obstruct the access of light and air to his house, in such a manner as to obstruct the plaintiff's windows so that the two central rooms on the east side of his house on the second floor were made unfit for occupation during the day without the use of artificial light.

The defendants completed the building of their house in October or November 1872. Criminal proceedings were taken by the plaintiff against the defendants in connection with acts done by them in the course of the rebuilding of their house, which proceedings were pending until December 1872.

On the 7th October 1873 the plaintiff instituted a suit for a mandatory injunction directing the defendants to pull down their house.

Held, 1st, that the darkening of the plaintiff's rooms, so as to render them unfit for occupation in the day-time without artificial light, was an injury which did not admit of being measured or redressed by damages, and that the plaintiff was entitled to a mandatory injunction directing the defendants to pull down so much of their house as was necessary to stop the injury; there having been no acquiescence on the part of the plaintiff and no delay in bringing his suit such as in any way to prejudice the defendants, or disentitled himself to that relief.

2nd, that the probability that the defendants would suffer more by the demolition of their house than the plaintiff, if his claim could be

MANDATORY INJUNCTION—*contd.*

reduced to money, would suffer by being awarded merely a money compensation, is no ground for depriving the plaintiff of the relief to which he was otherwise legally or equitably entitled, except under special circumstances.

To determine what demolition of the house was necessary, the Court executing it was directed to employ a professional man, agreed on by the parties if they could agree, or nominated by the Court if they could not. JAMNADAS SHANKARLAL *v.* ATMARAM HARJIVAN. *West* and *Pinhey*, JJ.....**I. L. Rep. 2 Bom. 133, 1877.**

MANU—Authority of.

See **Hindu Law—Authority of Writers. 4. 5.**

MARK OF ATTESTING WITNESS TO WILL—INSUFFICIENT ATTESTATION.

See **Indian Succession Act X. of 1865, § 50, Cl. 3.**

FERNANDEZ *v.* ALVES...**I. L. Rep. 3 Bom. 382.**

MARAVER CASTE.

See **Hindu Law—Remarriage of Widow.**

MURUGAYI *v.* VIRAMAKALI...**I. L. Rep. 1 Mad. 226.**

MARRIAGE—in Asura Form.

See **Hindu Law — Marriage in Asura Form.**

JAIKISONDAS *v.* HARKISONDAS ..**I. L. Rep. 2 Bom. 9.**

—— Between Persons of different Castes.

See **Hindu Law—Marriage.**

NARRAIN DHARA *v.* RAKHAL GAIN. **I. L. Rep. 1 Cal. 1.**

—— Contract to Give in Specific Performance.

See **Injunction. 1.**

GUNPUT NARAIN SINGH.....**I. L. Rep. 1 Cal. 74.**

—— in India between Persons with English Domicile.

See **Indian Succession Act X. of 1865, § 4.**

MILLER *v.* ADMINISTRATOR GENERAL OF BENGAL ..**I. L. Rep. 1 Cal. 412.**

Digitized by Google

MARRIAGE—*contd.*

—— Presumption of.

See **Mahomedan Law. 2.**

RANEE KHUJOOROONISSA *v.* MUSST. ROUSHAN JEHAN...**L. Rep. 3 I. A. 291; I. L. Rep. 2 Cal. 184.**

—— Revocation of Will of Jew by Second—in Lifetime of First Wife.

See **Indian Succession Act X. of 1865, § 56.**

GABRIEL *v.* MORDAKAI.....**I. L. Rep. 1 Cal. 148.**

MARRIED WOMAN—Capacity of—to contract.

See **Hindu Law—Capacity of Married Woman to Contract.**

NATHUBHAI *v.* JAVHER.....**I. L. Rep. 1 Bom. 121.**

—— Enticing away — Not Compoundable Offence.

See **Compounding Offences. 4. 7.**

REG. *v.* MUTHARAN...**I. L. Rep. 1 Mad. 191.**

REG. *v.* JETHA.....**I. L. Rep. 1 Bom. 158, n.**

MARRIED WOMAN'S PROPERTY ACT III. OF 1874—*Domicile—Separate Property of Wife—Decree against.*] The plaintiffs sued the defendants, husband and wife, who were British subjects, married in 1854, and having an English domicile, for wages for work done by him as a *dirsee* for the female defendant, who engaged him, and who carried on business as a milliner separately from her husband, under another name, the business having been started with money advanced to her by her husband, who, however, had no interest or concern in the business. *Held*, that Act III. of 1874 applied to persons having an English domicile, and that the wife alone was liable, and that the decree against her should be executed only against her separate property. ALUMUDY *v.* BRAHAM. *Garth*, C.J., and *Markby*, J...**I. L. Rep. 4 Cal. 140; 2 Cal. Rep. 431, 1878.**

—— §§ 7 and 8.

See **Husband and Wife. 1.**

HARRIS *v.* HARRIS...**I. L. Rep. 1 Cal. 285.**

MARRIED WOMAN'S SEPARATE PROPERTY — *Married Woman — Parsis.*] *Held*, in the absence of any rule applicable to Parsis other than the English law, following *Graham* v. *Londonderry* (3 Atk. 393), that a Parsi husband had no right to demand from the widow of his deceased father, in whose hands they were, delivery to himself of ornaments purchased for his wife by his deceased father, as they were the separate property of his wife. DHANJIBHAI B. GUJRAT *v.* NAVAZBAI. *Green*, J...**I. L. Rep. 2 Bom. 75, 1877.**

2. —— *Will—Legacy—Sole and Separate Use—Purchase of Lands with Money raised on such Legacy.*] *C.*, a married woman, was entitled to a legacy of Rs. 12,000, under the will of her father, which bequeathed to her that sum, "absolutely and for her own use and benefit, free from the control, debts, and liabilities of her present or any future husband," and the said sum of Rs. 12,000 was by the will directed to be paid to her "on her sole and personal receipt." While so entitled, she borrowed from her husband the purchase money of a certain estate on the understanding that she would pay him back the money when she obtained her legacy. The conveyance of the estate was made to *C.*, but not to her separate use. *C.* subsequently assigned her legacy, and out of the proceeds repaid her husband the purchase money advanced by him. The estate in question having been attached in execution of certain decrees against *C.*'s husband, *C.* instituted a suit for a declaration of her right to the possession of the property as full proprietor:—

Held, that the effect of the bequest in the will of *C.*'s father was to give to the plaintiff not only separate and exclusive use of the legacy money, but sole and absolute control over its disposal. When from the terms of the gift, settlement or bequest, the property is, expressly or by just implication, designed to be for a woman's separate and exclusive use (for technical words are not necessary), the intention will be fully acted on, and the rights and the interests of the wife sedulously protected in equity. The words of the bequest to the plaintiff excluded the marital rights of her husband. There being in the bequest no clause against anticipation by *C.*, the fact that she did (as she was entitled to do) anticipate the legacy by accepting the purchase money raised for her by her husband on its security, did not in any way change the legal character and conditions of the legacy itself, which could not be defeated by any contrivance of her husband or his creditors, nor did such conversion of the legacy bring it under the

Digitized by Google

MARRIED WOMAN'S SEPARATE PROPERTY—*contd.*

control of her husband, but the property purchased by the plaintiff was her own separate property, and was not subject to the debts or liabilities of her husband. HURST *v.* THE MUSSOORIE BANK. *Stuart*, C.J., and *Spankie*, J...**I. L. Rep. 1 All. 762, 1878.**

3. —— *Purchaser with Notice of Claim of Wife.*] In a subsequent suit by a purchaser of the property in suit in the above case, at an auction sale in execution of a decree against *Y.*, the husband of *C.*, with notice of the claim set up by *C.*, it appeared that *C.* and her husband were married before Act X. of 1865 came into force, and were born and domiciled in India. It was contended that the conveyance to *C.* operated to convey the legal estate to her husband, and that the conversion of the legacy operated to set it free from the separate use of *C.*, and that her husband was entitled to rents and profits during her life, and might obtain an estate by *curtsey* if he survived her, and that this interest passed to the plaintiff at the execution sale. In delivering judgment the Court say—"We are not prepared to hold that the English law would regulate the interest of *Y.* and *C.* in landed estate in this country acquired by the wife during coverture, but if it were applicable, and if any interest in the estate accrued to *C.*'s husband, in view of the agreement between her and her husband" (for payment by her to him of the amount of the purchase money), "it must be held that it came to his hand upon a contract between them that he would hold it in trust for her. The plaintiff purchased with full notice of the claim set up by *C.*, and it must be held that his purchase will not defeat her title." BERESFORD *v.* HURST. *Turner*, C. J., and *Pearson*, J...**I. L. Rep. 1 All. 772, 1878.**

MARKET VALUE.

See **Probate Duty. 1.**

The last Will of RAMCHANDRA LAKSHMANJI...**I. L. Rep. 1 Bom. 118.**

MASTER AND SERVANT—Liability of Master for the Wrongful Act of his Servant.

See **Principal and Agent. 1.**

BOMBAY BURMAH TRADING COMPANY, LIMITED *v.* MIRZA MAHOMED ALLY SHIRAZEE...**L. Rep. I. A. 130; S. C. I. L. Rep. 4 Cal. 116.**

MASTER AND SERVANT—*contd.*

—— *Suit for Damages for Wrongful Dismissal—Incompetence—Rendering True and Just Accounts.*] The plaintiff having obtained recommendations as a tea assistant in the defendant company's garden in Assam, came out to Calcutta, and after some interviews with the defendants' agents there, entered into an agreement with the defendants to enter into their service as assistant in their tea-gardens for a period of three years. The agreement stipulated that the plaintiff should, "when required to do so, render just and true accounts, and give every other particular and information of all moneys, &c., entrusted to him, or that may come into his possession, power, or custody, or under his control"; and it was also agreed that the defendants should "be at liberty to annul this agreement at any time for wilful misconduct of the plaintiff in not fulfilling the terms and conditions to be observed by him, or if he shall be prevented by reason of continued illness from attending to, or be hindered thereby in the performance of, his duties, or by reason of the bankruptcy, insolvency, or dissolution of the defendant company," and in those cases the salary was to cease, and the plaintiff be discharged from the defendant company's service. The plaintiff went to Assam, worked for a short period in the defendant's garden, and was then dismissed from the company's service on the ground of his incompetence. In a suit brought for wrongful dismissal, the Judge of the Small Cause Court was of opinion that, under the circumstances, there was no implied warranty on the part of the plaintiff of his competence, and the grounds for dismissal having been expressly stated in the agreement, the defendants were not justified in dismissing him on another ground, and therefore should not be allowed to give evidence of his incompetence:—

Held, on reference to the High Court, that the plaintiff having expressly undertaken to render true and just accounts, his incompetence to do so would, if proved, be an answer to the action, and therefore, that the defendants ought to have been allowed to give evidence that he was incompetent. "True and just accounts" meant such accounts as an inexperienced assistant in a tea-garden might reasonably be asked to render, and were not to be interpreted merely as an undertaking that the plaintiff would act honestly by his employers. *Held* also, that the agreement expressly stating the grounds of dismissal did not preclude

Digitized by Google

MASTER AND SERVANT—*contd.*

the defendants from dismissing the plaintiff for incompetence. MACGILLIVRAY *v.* THE JOKAI ASSAM TEA COMPANY. *Garth* C. J., and *Macpherson*, J.....**I. L. Rep. 2 Cal. 33, 1876.**

MATERIAL ERROR.

See **Criminal Procedure Code, Act X. of 1872, §§ 294 and 297.**

JUGGUTCHUNDER *v.* CHUKKERBUTTY. **I. L. Rep. 2 Cal. 110.**

—— Misappreciation of Evidence is not—under Act X. of 1872, § 297.

See **Criminal Procedure Code, Act X. of 1872, § 297. 1. 3. 4.**

In the matter of HARDEO...**I. L. Rep. 1 All. 139.**

In the matter of AUROKIAM.....**I. L. Rep. 2 Mad. 38.**

EMPRESS *v.* DONNELLY.....**I. L. Rep. 2 Cal. 405, 1877.**

——Unless there has been great Laxity in Weighing and Testing Evidence.

See **Criminal Procedure Code, Act X. of 1877, § 297. 8.**

EMPRESS *v.* MURLI.....**I. L. Rep. 2 All. 336.**

MATERIAL ERROR IN NOTIFICATION OF SALE—As to Amount of Government Revenue.

See **Sale in Execution of Decree. 18.**

GIRDHARI SINGH *v.* HURDO NARAIN SINGH.....**L. Rep. 3 I. A. 230.**

MATERIAL IRREGULARITY AT EXECUTION SALE.

See **Sale in Execution of Decree. 2.**

GHAZI *v.* KADIR BAKSH.....**I. L. Rep. 1 All. 221.**

—— Insufficient Description of Place of Sale—Proclamation not made on Spot—Sale by Civil Court of Land paying Revenue, though Revenue remitted for Term of Years.

See **Sale in Execution of Decree. 8.**

SHOWERS *v.* SETH GOBIND DASS... **I. L. Rep. 1 All. 400.**

MATERIAL IRREGULARITY AT EXECUTION SALE—*contd.*

—— Postponement of Sale—Absence of Fresh Proclamation giving Notice of Date of Adjourned Sale is.

See **Sale in Execution of Decree. 6.**

GOPEE NATH DOBEY *v.* ROY LUCHMIPAT.....**I. L. Rep. 3 Cal. 542.**

—— Release from Attachment before Sale of Part of Property advertised for Sale—Omission to publish Fresh Proclamation is.

See **Sale in Execution of Decree. 11.**

SHIB PROKASH SINGH *v.* SARDAR DAYAL SINGH...**I. L. Rep. 3 Cal. 544.**

MATERIAL MISSTATEMENT IN PETITION FOR SPECIAL LEAVE TO APPEAL.

See **Bengal Reg. VIII. of 1819, § 8, Cl. 2. 1.**

RAM SABUK BOSE *v.* MONMOHINI DOSSEE...**L. Rep. 2 I. A. 71.**

MATTERS RELATING TO REVENUE—Jurisdiction of High Court in.

See **Jurisdiction. 13.**

COLLECTOR OF SEA CUSTOMS, MADRAS, *v.* PUNNIAR CHITHAMBARAM...**I. L. Rep. 1 Mad. 89.**

MAXIMS-*Factum valet quod fieri non debuit.*

See **Hindu Law—Adoption. 6. 7.**

GOPAL *v.* HANMANT...**I. L. Rep. 3 Bom. 273.**

BHAGIRTHIBAI *v.* RADHABAI..... **Ibid. 298.**

—— *Caveat Emptor.*] *Per Stuart*, C. J.—"It was argued before us that the doctrine of *caveat emptor* does not apply to a public sale; but for this opinion there does not appear to be any authority. Such a view of the law probably arises from a misapprehension of the rules of the common law of England as to sales in market *overt*, but which can have no possible application to the sale in execution of a decree in India of the rights and interests of a minor. The doctrine of *caveat emptor* relates to defects, latent defects, which the seller, at the inception of the contract, does not or is not bound to know or to inquire into, the purchaser taking the risk of the

Digitized by Google

MAXIMS—*contd.*

status quo. The doctrine in truth, if it does not contemplate absolute good faith on both sides, at least puts the burden of inquiry and investigation on the seller (*sic*), but it has not the same application where there is anything in the nature of bad faith or fraud."

Per Pearson, Turner, Spankie, and *Oldfield,* JJ.—"If the doctrine of *caveat emptor* applies where a sale in execution of a decree has been practically set aside, then it may be proper to hold that the omission to see that the order of sale was warranted by the decree, amounted to such a want of reasonable care as to deprive the purchaser of his right to relief. But should not the question of what amounts to reasonable care be considered in reference to the circumstances of the place? In England purchases of real estate are rarely made without the intervention of a solicitor and a scrutiny of title. In these provinces such precautions are almost entirely unknown. However that might be, it would be going too far to hold that the mere omission to see that the order for sale was warranted by the decree ought to deprive the purchaser of relief (under the circumstances at present known to the Court), if on other grounds he is entitled to it.

MAKUNDI LAL *v.* KAUNSILA...**I. L. Rep. 1 All. 568, 573, 574. 579.**

S. C. under **Sale in Execution of Decree. 13.**

—— *In pari delicto, potior est conditio possidentis.*

See **Estoppel. 6.**

PARAM SINGH *v.* LALJI MAL...**I. L. Rep. 1 All. 403.**

—— *Sic utere tuo alienum non lædas.*

See **Right to Fish in the Sea.**

BABAN *v.* NAGU.....**I. L. Rep. 2 Bom. 19.**

MAYUKHA—Authority of.

See **Hindu Law—Authority of Writers. 2. 4. 5.**

SAKARAM *v.* SITABAI...**I. L. Rep. 3 Bom. 353.**

LALUBHAI *v.* MANCOOVERBAI ..**I. L. Rep. 2 Bom. 388.**

MORARJI GOKALDAS *v.* PARVATIBAI. **I. L. Rep. 1 Bom. 177.**

MEASURE OF DAMAGES—For Breach of Contract to take Goods, Collateral Contract by Vendor.

See **Damages. 3.**

COHEN *v.* CASSIM NANA.....**I. L. Rep. 1 Cal. 264.**

—— Infringement of Patent.

See **Infringement of Patent.**

SHEEN *v.* JOHNSON...**I. L. Rep. 2 All. 368.**

—— Wrongful Attachment of Property of Third Person—Loss of Property while under Attachment—Liability of Execution Creditor.

See **Liability of Execution Creditor in Damages for Wrongful Seizure.**

GOPAL *v.* GOKALDAS...**I. L. Rep. 3 Bom. 74.**

—— Wrongful Conversion of Timber—Market value at Place where Principal Market exists, less Cost of Carriage.

See **Damages. 4.**

BOMBAY BURMAH TRADING CORPORATION *v.* MIRZAH MAHOMED ALLY.....**I. L. Rep. 4 Cal. 116; L. Rep. 5 I. A. 130.**

MEMORANDUM OF ASSOCIATION—Provision in—empowering Sub-division of Shares.

See **Agreement to take Shares in a Company. 1.**

ANANDJI VISRAM *v.* NARIAD S. & W. Co.....**I. L. Rep. 1 Bom. 320.**

MERGER.

See **Mortgage. 10. 25. 39.**

KALIPROSONNO *v.* KAMINI SOONDERI.....**I. L. Rep. 4 Cal. 475.**

VENKATA NARASAMMAH *v.* RAMIAH. **I. L. Rep. 2 Mad. 108.**

HASSOON ARRA *v.* JAWADOONISSA. **I. L. Rep. 4 Cal. 29.**

—— *Mortgage—Effect of Subsequent Mortgage.*] A creditor holding a mortgage on the lands of his debtor does not necessarily surrender that mortgage, or lower its priority, by taking a subsequent mortgage, including the same lands with

Digitized by Google

MERGER—*contd.*

other lands, for the same debt. Whether the earlier mortgage becomes merged and extinguished or not is a question of intention. GOLUKNATH MISSER *v.* LALLA PREM LAL. *Jackson* and *White*, JJ...**I. L. Rep. 3 Cal. 307, 1877.**

MERITS, ERROR NOT AFFECTING—Absence of Notice of Action.

See **Act XV. of 1873, §§ 28 and 43.**

MUNICIPAL COMMITTEE OF MORADABAD *v.* CHATRI SINGH...**I. L. Rep. 1 All. 269.**

—— Improper Admission in Evidence of Unstamped or Insufficiently Stamped Document.

See **Error not affecting the Merits. 1.**

AFZAL-UN-NISSA *v.* TEJ BAN...**I. L. Rep. 1 All. 725.**

See **Appeal—Civil. 20.**

KHOOB LALL *v.* JUNGLE SINGH. **I. L. Rep. 3 Cal. 787.**

—— Non-Joinder of Co-Sharers in Suit for Enhanced Rent.

See **Co-Sharers of Land. 4.**

BOYDONATH BAG *v.* GRISH CHUNDER ROY...**I. L. Rep. 3 Cal. 26.**

—— Non-Joinder of Local Government in Suit against Municipal Committee where District Magistrate impleaded as representing Local Government.

See **Act XV. of 1873, §§ 28 and 43.**

MUNICIPAL COMMITTEE OF MORADABAD *v.* CHATRI SINGH.....**I. L. Rep. 1 All. 269.**

MESNE PROFITS—Application for Assessment of—Suit for Possession—Decree—Limitation.

See **Civil Procedure Code, Act VIII. of 1859, § 197. 1.**

DILDAR HOSSEIN *v.* MUJEEDUNNISSA...**I. L. Rep. 4 Cal. 629.**

—— Interest on.

See **Execution of Decree. 20.**

HURRODURGA *v.* SHARRAT SOONDERY...**I. L. Rep. 4 Cal. 674.**

MESNE PROFITS—*contd.*

See **Mesne Profits. 1. 4.**

See **Interest. 12.**

HURROPERSAUD *v.* SHAMAPERSAUD. **L. Rep. 5 I. A. 31; S. C. I. L. Rep. 3 Cal. 654.**

—— Suit for—Misappropriated — Limitation—Act XXIII. of 1861, § 11.

See **Mesne Profits. 5.**

—— Suit for—Right to Deduct Sums paid for Government Revenue—Set-off.

See **Right to recover Government Revenue paid during Wrongful Possession.**

TILUCK CHAND *v.* SOUDAMINI DASI. **I. L. Rep. 4 Cal. 566.**

—— Suit to Redeem—Laches.

See **Limitation. 19.**

JUGGERNATH *v.* SYUD SHAH.....**L. Rep. 2 I. A. 48.**

1. —— *Execution of Decree—Act XXIII. of 1861, § 11—Subsequent Mesne Profits—Interest—Estoppel.*] The appellant having obtained in 1859 a decree for a moiety of the land the subject of his suit, with an ascertained sum as his share of the mesne profits thereof for the current year 1858, petitioned in the execution proceedings for subsequent mesne profits with interest thereon, and for interest on the amount already decreed. It appeared that as regards the subsequent mesne profits the defendant (pending his appeal) had executed certain security bonds to the Court in which he had undertaken to account in respect thereof in the suit :—

Held, that § 11 of Act XXIII. of 1861 having been construed by a general *consensus* of the Indian Courts to mean, that when a decree is silent as to mesne interest or profits, subsequent to the institution of the suit, the Court executing the decree cannot under that section assess or give execution for such interest or mesne profits, and secondly, that the plaintiff is still at liberty to assert his right to such mesne profits, in a separate suit :—their Lordships, whatever their opinion upon the construction of that section might have been if the question had been *res integra*, accepted the construction of the Indian Courts as settled law; and the plaintiff was therefore not entitled to the interest claimed on the subsequent mesne profits.

Digitized by Google

MESNE PROFITS—*contd.*

But that the liability incurred by the respondent under the security bonds, was an obligation to account in the suit for the subsequent mesne profits of the appellant's land, which was capable of being enforced by proceedings in execution, and made the accounts "a question relating to the execution of the decree" within the meaning of the latter clause of § 11 of Act XXIII. of 1861, and in any case estopped the respondent from denying that the said mesne profits were not payable under the decree. *Pisani* v. *Attorney General of Gibraltar* (L. Rep. 5 P. C. 16) approved. SADASIVA PILLAI *v.* RAMALINGA PILLAI.....**L. Rep. 2 I. A. 219; 15 Beng. L. Rep. 382; 24 W. Rep. 193, 1875.**

2. —— *Execution of Decree—Act XXIII. of* 1861, § 11—*Mesne Profits obtained during Possession under Decree reversed on Appeal.*] The respondent obtained possession of certain land under a decree, dated the 7th of May 1870, which was reversed on appeal on the 14th of May 1874. The appellant, the defendant in the original suit, thereupon, seeking execution of the Appellate Court's decree, applied for possession of the property taken in execution under the first decree, and for mesne profits during the time she was out of possession. The application was refused, on the ground that mesne profits had not been awarded by the decree of the Appellate Court. On appeal to the High Court:—

Held, that where property has passed in execution of a decree, and that decree has been set aside, the Court which gave possession of the property is bound to make complete restitution to the person injured by its cancelled decree, and that it was therefore competent for the Court to award to the appellant the mesne profits claimed. LATI KOOER *v.* SOBADRA KOOER. *Ainslie* and *McDonnell*, JJ...**I. L. Rep. 3 Cal. 720; 2 Cal. Rep. 75, 1878.**

3. —— *Trespassers — Liability of.*] *Held* by *Pearson*, *Turner*, and *Spankie*, JJ.—That when in the exercise of a *bonâ fide* claim of right a trespasser enters on and holds the property of another, the owner is sufficiently compensated by receiving an amount equivalent to the net profits he would have himself received had he been in possession. In such a case such costs of collection as are ordinarily incurred by the owner may fairly be allowed to the trespasser, as well as such sums as must of necessity be paid, *e.g.*, Government revenue. But when the trespass is altogether tortuous and malicious, when the trespasser has entered or continued on the property without any *bonâ fide* belief that he is entitled to do so, where in defiance of the rights of another he has thrust himself into an estate, although he may still claim all necessary payments, such as Government revenue or ground rent, it is not imperative on the Court, in estimating damages, to allow the wrong-doer even such charges as would ordinarily, but voluntarily, be incurred by an owner in possession, but the Court may refuse to sanction such deduction.

Per Stuart, C.J.—Whether the trespasser is *bonâ fide* or not, he is entitled, as against the rightful owner, to be credited with all such payments in respect of the land as collection fees and other village expenses. ALTAF ALI *v.* LALJI MAL.....**I. L. Rep. 1 All. 518, 1877.**

4. —— *Principle on which they should be assessed — Interest on.*] In determining the amount payable to the holder of a decree for mesne profits, the Court is bound to consider, not what has been, or what with good management might have been, realized by the party in wrongful possession, but what the decree-holder would have realized had the arrangement prevailing at the time of his possession subsisted all along.

Under a decree for mesne profits, the decree-holder is entitled to interest on such profits from the time at which they would have come to him if he had not been dispossessed. LUCKHY NARAIN *v.* KALLY PANDO BANERJEE. *Birch* and *Mitter*, JJ.....**I. L. Rep. 4 Cal. 882; 4 Cal. Rep. 60, 1879.**

5. —— *Mesne Profits Misappropriated — Limitation Act IX. of* 1871, *Sched. II., Arts.* 40, 109—*Act XXIII. of* 1861, § 11.] The defendant obtained a decree in a suit brought against the plaintiff for arrears of rent and ejectment, in execution of which he evicted the plaintiff from his holding, and, after getting possession thereof, carried away certain crops then standing on the land. The plaintiff appealed from the decree obtained by the defendant, and on appeal it was set aside, on the plaintiff depositing the rent due, and the plaintiff recovered possession of his tenure :—

Digitized by Google

MESNE PROFITS—*contd.*

Held, that a suit for the value of the crops carried away by the defendant, while in his possession under his decree, was not barred by § 11 of Act XXIII. of 1861. Under that decree the defendant was not entitled to the crops which were then standing, and which belonged to the plaintiff, and whether the decree was reversed or not was immaterial; in either case the plaintiff could maintain this suit.

Held also, that the suit was substantially a suit "for the profits of immoveable property belonging to the plaintiff wrongfully received by the defendant," within the meaning of Art. 109, Sched. II. of Act IX. of 1871, and not a suit for "compensation for any wrong, malfeasance, nonfeasance, or misfeasance independent of contract" within the meaning of Art. 40. SHURNOMOYEE *v.* PATTARI SIRKAR. *Mitter* and *Prinsep*, JJ.....**I. L. Rep. 4 Cal. 625, 1878.**

MILITARY OFFICER—Execution of Decree against.

See **Execution of Decree. 15.**

MERCER *v.* NARPAT RAI...**I. L. Rep. 1 All. 730.**

MINOR — Adoption of — Agreement between Natural and Adoptive Parents defining and restricting Rights of.

See **Hindu Law—Adoption. 5. 17.**

RADHABAI *v.* GANESH...**I. L. Rep. 3 Bom. 7.**

RAMASWAMI VENCATARAMAIYAN... **L. Rep. 6 I. A. 196.**

—— Alienation by Guardian—Power of Certificated and Uncertificated Guardian.

See **Alienation by Guardian. 2.**

RAM CHUNDER CHUCKERBUTTY *v.* BROJONATH MOZOOMDAR ... **I. L. Rep 4 Cal. 929.**

See **Mortgage. 29. 30.**

ABHASEE BEGUM *v.* MOHARANEE RAJROOP . **I. L. Rep. 4 Cal. 33.**

DEBI DUTT SAHOO *v.* SABOODRA BIBEE...**I. L. Rep. 2 Cal. 283.**

See **Sale by Guardian.**

SOONDER NARAIN *v.* BENNUD...**I. L. Rep. 4 Cal. 76.**

MINOR—*contd.*

See **Mahomedan Law — Sale by Guardian.**

HASAN ALI *v.* MEHDI HUSAIN...**I. L. Rep. 1 All. 533.**

See **Review. 10.**

MADHO DAS *v.* RUKMAN SEVAK SINGH...**I. L. Rep. 2 All. 287.**

—— Alienation by Guardian of—Suit to set aside on attaining Majority—Limitation.

See **Alienation by Guardian. 1.**

PROSONNA NATH *v.* AFZOLONESSA. **I. L. Rep. 4 Cal. 523.**

—— Appointment of Guardian to—after Previous Refusal.

See **Act IX. of 1861, § 1.**

NEHALO *v.* NAWAL...**I. L. Rep. 1 All. 428.**

—— Authority to Adopt given by (Beng. Reg. X. of 1793, § 33).

See **Hindu Law—Adoption. 10.**

JUMOONA DASSYA *v.* BAMASOONDERAI ..**L. Rep. 3 I. A. 72; I. L. Rep. 1 Cal. 289.**

——Custody of—Loss of Caste does not deprive Father of Right of.

See **Loss of Caste. 1.**

KANAHI RAM *v.* BIDDYA RAM...**I. L. Rep. 1 All. 549.**

—— Custody of—Prostitution of Legal Guardian disqualifies for Right of.

See **Mahomedan Law—Guardian. 1.**

ABASI *v.* DUNNE...**I. L. Rep. 1 All. 598.**

—— Gift to a—by Father or Guardian—Possession.

See **Mahomedan Law—Gift. 2.**

AMEEROONISSA *v.* ABEDOONISSA. **L. Rep. 2 I. A. 87.**

—— To whom Guardian *ad Litem* appointed.

See **Majority Act IX. of 1875, § 3.**

SUTTYA GHOSAL *v.* SUTTYANUND GHOSAL..**I. L. Rep. 1 Cal. 388.**

—— Kidnapping—Abetment of.

See **Abetment. 4.**

REG. *v.* SAMIA KAUNDAN...**I. L. Rep. 1 Mad. 173.**

Digitized by Google

MINOR—*contd.*

—— Kidnapping—from Lawful Guardianship.

See **Kidnapping. 1.**

EMPRESS *v.* MUSADBAKSH...**I. L. Rep. 3 Bom. 178.**

—— Sale by Guardian of.

See **Mahomedan Law — Sale by Guardian. 1.**

HASAN ALI *v.* MEHDI HUSAIN...**I. L. Rep. 1 All. 533.**

—— Sale by Guardian of.

See **Sale by Guardian.**

SOONDER NARRAIN *v.* BENNUD RAM...**I. L. Rep. 4 Cal. 76.**

See **Alienation by Guardian. 1. 2.**

—— Suit by Mother as Guardian of—Certificate necessary.

See **Bombay Minors Act XX. of 1864, § 2. 1.**

MURLIDHAR *v.* SUPDU.....**I. L. Rep. 3 Bom. 149.**

MINOR CHILDREN OF DECEASED MEMBER OF HINDU JOINT FAMILY—Appointment of Guardian to.

See **Certificate of Administration. 1.**

GURACHARYA *v.* SVAMIRAYACHARYA.....**I. L. Rep. 3 Bom. 431.**

MINOR GIRL—Disposal of—for purposes of Prostitution.

See **Penal Code, § 372. 1.**

REG. *v.* ARUNA CHELLAM...**I. L. Rep. 1 Mad. 164.**

MINOR'S PROPERTY—Alienation of—by Certificated and Uncertificated Guardian.

See **Alienation by Guardian.**

See **Mahomedan Law — Sale by Guardian.**

See **Mortgage. 29. 30.**

See **Review. 10.**

And *see* **Sale by Guardian.**

MINORITY.

See **Act IX. of 1859, § 20.**

MOHUMMUD BAHADOOR KHAN *v.* THE COLLECTOR OF BAREILLY. **L. Rep. 1 I. A. 167.**

MINORITY—*contd.*

—— Act VIII. of 1859, § 246—Act XIV. of 1859, §§ 11, 12.

See **Hindu Law — Alienation of Ancestral Property. 3.**

MUSST. PHOOLBAS KOONWAR *v.* LALLA JOGESHUR SAHOY...**L. Rep. 3 I. A. 7.**

—— Accrual of Cause of Action during.

See **Alienation by Guardian. 1.**

PROSONNA NATH *v.* AFZOLONESSA. **I. L. Rep. 4 Cal. 523.**

—— Hindu Domiciled and Resident in Calcutta.

See **Age of Majority. 1.**

MOTHOORMOHUN *v.* SOORENDRO... **I. L. Rep. 1 Cal. 108.**

—— Reg. XXVI. of 1793.

See **Mahomedan Law—Gift. 2.**

AMEEROONISSA *v.* ABEDOONISSA... **L. Rep. 2 I. A. 87.**

MIRAS—Miras *Lands—Proof of* Mirasdar's *Title— Right of Perpetual Cultivation —Local Usage or Custom—Long Possession.*] A *sanad* is not indispensable to the proof of *mirasi* tenure. The *mirasdars* in the Bombay Presidency are very numerous, and in all probability comparatively few of them can now produce *sanads.* Many of their predecessors in title may have once possessed such muniments of title, which time has swept away; but their titles have not perished with the *sanads* whereby they were created. Again, there are many *mirasdars* whose predecessors never had *sanads*, but who nevertheless have a perfect title.

The titles, both of those who once had but have lost their *sanads*, and of those who never had such documents, may be proved by other evidence, if forthcoming, and long possession is a strong element in such proof. *Mirasi* right, or perpertuity of tenure, is like other facts, susceptible of proof by various means.

Therefore, where the plaintiffs claimed to hold certain lands as their ancestral *miras*, alleging a right of perpetual cultivation by the custom of the country in virtue of their long enjoyment of them, and sued to recover them from the defendants, who claimed as purchasers at a Court sale of the right, title and interest of the *inamdars* of the said lands, and the lower Courts dismissed the suit on the ground that the plaintiff's had failed to prove any right of perpetual

Digitized by Google

MIRAS—*contd.*

cultivation of the land, the District Judge in appeal, observing that "no term of occupation as a tenant of *inam* lands will confer a right of perpetual cultivation, and nothing short of a regular *sanad* would confer the plaintiff's alleged right on them":—

The High Court, on special appeal, remanded the cause for a new trial on the points whether the plaintiffs as *mirasdars*, or by local usage in virtue of their length of possession, and uniformity of payment of rent or assessment or otherwise, previously to the Court sale to the defendant, acquired a right to hold in perpetuity the lands in question on payment of a fixed or other rent ascertainable by local usage. BABAJI *v.* NARAYAN. *Westropp*, C. J., and *West*, J.

I. L. Rep. 3 Bom. 340, 1879.

S. C. under **Construction of Sanad 2**, and **Practice—Civil. 10.**

2. —— *Grant in* Inam—*Right of* Mirasdar *to hold at an Invariable Rent—Enhancement by* Inamdar.] The plaintiff, the *Inamdar* of certain lands granted to his father in *inam* by the Satara Government, which grant was recognized by the British Government, sued the defendants, whom he described in his plaint as his yearly tenants, alleging that he had by notice called on them to pay him a higher rate of rent or to quit. The defendants alleged that they and their ancestors held the land as *mirasdars* under the Satara Government, previous to the grant in *inam* to the plaintiff's father, and denied the plaintiff's right to demand an enhanced rent:—

Held, that if the defendants or their ancestors had, as against the Satara Government, the right to hold the lands in perpetuity at a fixed rent, they would have the same right as against the plaintiff. But even assuming that the defendants were *mirasdars*, it did not thence follow that they were entitled to hold at an invariable rent. If *mirasi* ever was extensively held at a permanently fixed rate, it has long since generally ceased to be so. There must be further proof than the fact that the defendants have been styled *mirasdars* to entitle them to fixity of rent. The lower Court not having arrived at any finding on the material issue in the case, it was remanded for trial on the point whether the defendants or their ancestors were entitled to hold the land in dispute under the Satara Government previously to the grant thereof in *inam* to the plaintiff's father in perpetuity at an invariable rent, the burden of proving such issue being laid on the defendant.

MIRAS—*contd.*

Held, also, that the question whether the land could bear the rent which the plaintiff had demanded was immaterial. If the defendants were entitled to hold at an invariable rent, the plaintiff had no right to enhance, moderately or immoderately. If, on the other hand, the defendants were not entitled to hold the land at an invariable rent, the plaintiff might, in the absence of any special contract with the defendants to the contrary, demand such rent as he pleased; and if the defendants were *mirasdars*, they would be entitled to hold the land at such rent as the plaintiff thought fit to demand, or, if they thought his demand too high, to surrender the land to him. VISHNUBHAT *v.* BABAJI. *Westropp*, C.J., and *Pinhey*, J.....**I. L. Rep. 3 Bom. 345, n.**

See PARSOTAM KESHAVDAS *v.* KALYAN RAYJI.....**I. L. Rep. 3 Bom. 348.**

Under **Enhancement of Rent. 5.**

3. —— Razinama — *Extinction of* Miras *Rights.*] *Haibati* was *mirasdar* of a piece of land. After his death his son *Bhagu*, in 1867, passed a *rasinama* to the Mamlatdar in favour of *Lukshman*, resigning the *miras* land without any reservation or qualification, and at the same time put *Lukshman* in possession of the land resigned and comprised in the *rasinama*. *Haibati's* right in the land was sold in December 1869, at an auction sale at which the plaintiff *Tarachand* was the purchaser. In a suit by *Tarachand* against *Lukshman* to recover possession of the land with mesne profits:—*Held*, that the transfer to *Lukshman* was complete and that the rights of *Bhagu* were wholly extinguished, and that the plaintiff, a purchaser of *Haibati's* right subsequent to such transfer to the defendant, was not entitled to recover possession of the land. TARACHAND HIRCHAND *v.* LUKSHMAN BHAVANI. *West* and *Nanabhai Harridas*, JJ.

I. L. Rep. 1 Bom. 91, 1875.

4. —— Razinama — *Right* to *eject.*] A *mirasdar* who has given in a *rasinama* has a right to recover his *miras* land, and eject a tenant put in possession thereof by the Collector, if he sues within the period of limitation, unless in that document it is expressly stipulated that he has abandoned his *miras* rights. JOTI BHIMRAV *v.* BALUBIN BAPUJI. *Warden* and *Gibbs*, JJ ...**I. L. Rep. 1 Bom. 308, 1868.**

Digitized by Google

MIRAS—*contd.*

5.——*Mortage of* Mirasi *Lands*—Razinama.] *D.*, widow of a Hindu *mirasdar*, by a duly registered deed, dated 24th November 1869, mortgaged the *mirasi* lands of her late husband to the plaintiff for Rs. 150. Subsequently, on the 5th July 1872, *D.* executed a *rasinama* of the land in favour of *R. G.*

Held, that the mortgage by *D.* bound her estate in the land as a Hindu widow, and that, whether the property be regarded as *mirasi* or as that of an ordinary occupant, it was transferable, under § 36, *Bombay Act I. of* 1865, and when she had executed the duly registered mortgage of 1869 there was nought left in her to relinquish, or otherwise deal with, than the equity of redemption. In *Tarachand* v. *Lukshman* (I. L. Rep. 1 Bom. 91) there was no mortgage or other specific lien on the land created by the *mirasdar*, or his predecessors in title, previous to his execution of the *rasinama* in favour of the new occupant. RAMCHANDRA MANKESHWAR *v.* BHIMRAV RAVJI. *Westropp*, C.J., and *Melvill*, J... **I. L. Rep. 1 Bom. 577, 1877.**

MIRASDAR—Rights of.

See **Rights of Mirasdar.**

FAKIR MUHAMMAD *v.* TIRUMALA CHARIAR...**I. L. Rep. 1 Mad. 205.**

MIRASI RIGHTS OF DANCING GIRL.

See **Dancing Girl. 1.**

KAMALAM *v.* SADAGOPA SAMI... **I. L. Rep. 1 Mad. 356.**

MIRASI TENANTS—Enhancement of Rent of—by *Inamdar.*

See **Inamdar. 1.**

PRATAPRAI GUJAR *v.* BAYAJI NAMAJI.....**I. L. Rep. 3 Bom. 141.**

See **Miras. 2,** *supra.*

MISAPPRECIATION OF EVIDENCE—Material Error—Act X. of 1872, § 297.

See **Criminal Procedure Code, Act X. of 1872, § 297. 1. 3. 4. 8.**

In the matter of HARDEO...**I. L. Rep. 1 All. 139.**

In the matter of AUROKIAM...**I. L. Rep. 2 Mad. 38.**

EMPRESS *v.* DONNELLY.....**I. L. Rep. 2 Cal. 405.**

EMPRESS *v.* MURLI...**I. L. Rep. 2 All. 336.**

MISCARRIAGE OF ARBITRATORS.

See **Arbitration. 7.**

CHOWDHRI MURTAZA HOSSEIN *v.* MUSST. BIBI BECHERUNISSA... **L. Rep. 3 I. A. 209.**

MISCELLANEOUS PROCEEDINGS.

See **Stay of Execution. 1.**

HARSHANKAR PARSHAD.....**I. L. Rep. 1 All. 178.**

See **Civil Procedure Code, Act VIII. of 1859, § 6. 1.**

GYA PARSHAD *v.* BHUP SINGH...**I. L. Rep. 1 All. 180.**

MISCHIEF.

See **Criminal Trespass. 4.**

EMPRESS *v.* BUDH SINGH...**I. L. Rep. 2 All. 101.**

See **Land held by Joint Owners.**

EMPRESS *v.* RAJCOOMAR SINGH... **I. L. Rep. 3 Cal. 573.**

MISDESCRIPTION OF GOODS.

See **Railway Company. 3.**

ISHWARDASS *v.* THE G. I. P. RY. CO...**I. L. Rep. 3 Bom. 120.**

MISDESCRIPTION OF PROPERTY AS LAKHIRAJ BY JUDGMENT CREDITOR IN APPLICATION FOR EXECUTION — Relieves Subsequent Mortgagee Decree-holder of Necessity of giving Notice of his Proceedings in Execution.

See **Lis Pendens. 1.**

LALA KALI PROSAD *v.* BULI SINGH. **I. L. Rep. 4 Cal. 789.**

MISJOINDER.

See **Small Cause Court—Mofussil. 4.**

NANKU *v.* BOARD OF REVENUE...**I. L. Rep. 1 All. 444.**

—— Of Causes of Action.

See **Misjoinder of Causes of Action.**

—— Of Drawer and Acceptor of *Hundi* residing within Jurisdiction of different Courts.

See **Procedure—Civil. 1.**

BASANT RAM *v.* KOLAHAL...**I. L. Rep. 1 All. 392.**

Digitized by Google

MISJOINDER OF CAUSES OF ACTION—*Specific Performance—Act I. of* 1877, § 27, *Cl.* (*b*).] The plaintiffs sued to enforce an agreement for the execution of a conveyance of certain immoveable property, and for the possession of such property, making the party to such agreement, and the persons who had, subsequently to the date thereof, purchased the property at an execution sale, defendants in the suit, on the allegation that such persons had purchased in bad faith and with notice of the agreement:—

Held, that, with reference to § 27 of the Specific Relief Act I. of 1877, under the circumstances, there was not necessarily a misjoinder of causes of action. GUMANI *v.* RAM CHARAN. *Spankie* and *Oldfield*, JJ...**I. L. Rep. 1 All. 555, 1878.**

2. —— *Act X. of* 1877, §§ 28, 31, 45—*Alternative Relief.*] In a suit instituted against six parties, the plaintiff prayed for *khas* possession of a four-anna share in a certain lot, or, in the alternative, for a decree for arrears of rent against the defendants, or such of them as should on inquiry appear to be respectively liable. It appeared that the plaintiff had been kept out of possession by one only of the six defendants, and that, if he was entitled to a decree for arrears of rent, another of the defendants was liable to a portion only of such arrears:—

Held, that the suit was not improperly framed; that there was no objection to the prayer for alternative relief; and that the suit should not have been dismissed for misjoinder. JANOKINATH MOOKERJEE *v.* RAMRUNJUN CHUCKERBUTTY. *Birch* and *Mitter*, JJ.....**I. L. Rep. 4 Cal. 949, 1879.**

MISREPRESENTATION — Composition Deed—Release—Act IX. of 1872, §§ 13, 18, 19—Cancelling Signature.

See **Cancellation of Signature.**

THE ORIENTAL BANK CORPORATION *v.* JOHN FLEMING...**I. L. Rep. 3 Bom. 342.**

MISSING PERSON—Presumption of Death of—Opening up of Inheritance—Hindu and Mahomedan Law.

See **Evidence. 21.**

PARMESHAR RAI *v.* BISHESHAR SINGH...**I. L. Rep. 1 All. 53.**

MISSTATEMENT IN PETITION FOR SPECIAL LEAVE TO APPEAL.

See **Bengal Reg. VIII. of 1819, § 8, Cl. 2.**

RAM SABUK BOSE *v.* MONMOHINI DOSSEE...**L. Rep 2 I. A. 71.**

MISTAKE—Money paid by—in Excess in Execution of Decree.

See **Act XXIII. of 1861, § 11. 2.**

AGRA SAVINGS BANK *v.* SRI RAM MITTER...**I. L. Rep. 1 All. 388.**

1. —— *Contract*—Mulgeni—*Enhancement of Rent.*] The plaintiff was a *Mulgar* or *rayat* under Government, and paid on his land an annual assessment of Rs. 56-8-0 until 1872, when North Kanara was surveyed, when his assessment was raised to Rs. 129-8-0, and he was also made liable to a local fund cess of Rs. 4-9-0. His ancestor had sublet the land in 1847 to the defendant at a fixed annual rental of Rs. 150 on a lease known as a *Mulgeni kabulayat*. The plaintiff sued to recover from the defendant the enhanced assessment and cess.

Held, that the plaintiff was not entitled to recover, inasmuch as the lease made no provision for an increased rent under any circumstances, but, on the contrary, expressly provided against any increase. If the assessment had been lessened instead of augmented, the tenant could not have claimed any diminution of his rent; nor, on the other hand, could he be subject to an increase because of the greater burden now imposed on the landlord; and this was so, although both parties, when they entered into the agreement, supposed that the Government assessment would remain unaltered. The influence of error is to be admitted in such cases only where it was of such a kind, that it must be supposed to have made the contracting parties will quite different from the immediate result attained. It is not enough that there was an error as to some point, even though a material point, an error as to which does not affect the substance of the whole consideration. A mistake as to existing facts may make a contract void, when an erroneous expectation, which events entirely falsify, has no influence at all. BABSHETTI *v.* VENKATARAMANA. *West* and *Pinhey*, JJ...**I. L. Rep. 3 Bom. 154, 1879.**

S. C. under **Small Cause Court—Mofussil. 5.**

Digitized by Google

MISTAKE OF FACT—Money paid under a.

See **Contract. 11.**

SHUGAN CHAND *v.* GOVERNMENT OF N. W. PROVINCES...**I. L. Rep. 1 All. 79.**

MISTAKE OF LAW AND FACT.

See **Contract. 5.**

SETH GOKULDASS *v.* MURLI...**L. Rep. 5 I. A. 78; I. L. Rep. 3 Cal. 602.**

MITAKSHARA—Authority of.

See **Hindu Law — Authority of Writers. 2. 4. 5.**

SAKHARAM *v.* SITABAI...**I. L. Rep. 3 Bom. 353.**

LALLUBHAI *v.* MANCOOVERBAI ...**I. L. Rep. 2 Bom. 388.**

MORARJI GOKALDAS *v.* PARVATIBAI..... **I. L. Rep. 1 Bom. 177.**

MITIGATION OF PENALTY—Of Forfeited Recognizance Bond.

See **Recognizance. 1.**

EMPRESS *v.* NURUL HUQQ...**I. L. Rep. 3 Cal. 757.**

MOCASSA VILLAGES.

See **Limitation. 20.**

RAJAH SRI CHAITANYA *v.* THE COLLECTOR OF GANJAM...**L. Rep. 1 I. A. 335.**

MODE IN WHICH A MAGISTRATE SHOULD SHOW CAUSE AGAINST A RULE—When a Magistrate wishes to show cause against a rule issued by the High Court, the proper course for him to adopt is to apply to the Legal Remembrancer, to cause an appearance to be made for him in Court, and not to address the Registrar by letter. *In the matter of the Petition of* HURRO SOONDERY CHOWDRAIN.....**I. L. Rep. 4 Cal. 19.**

MODIFICATION OF CLAIM TO A DIRECT SETTLEMENT TO ONE FOR SUB-SETTLEMENT.

See **Act I. of 1869. 2. 4.**

WIDOW OF SHUNKER SAHAI *v.* RAJAH KASHI PERSHAD...**L. Rep. 4 I. A. 198, n.**

MODIFICATION OF CLAIM TO A DIRECT SETTLEMENT TO ONE FOR A SUB-SETTLEMENT—*contd.*

GAURI SHUNKER *v.* MAHARAJAH OF BULRAMPORE...**L. Rep 6 I. A. 1; I. L. Rep. 4 Cal. 839.**

MOFUSSIL COURTS—Law administered by.

See **Champerty. 1.**

CHEDAMBARA CHETTI *v.* RENGA KRISHNA.....**L. Rep. 1 I. A. 241.**

MOHUNT—Certificate to collect debts due to Private Estate of—Right of *Chela* in preference to *Guru-Bhai.*

See **Certificate to collect Debts. 4.**

DUKHARAM BHARTI *v.* LUCHMUN BHARTI...**I. L. Rep. 4 Cal. 954.**

—— *Right of Appointment of—Custom*— Onus Probandi.] The constitution and rules of religious brotherhoods attached to Hindu temples are by no means uniform in their character, and the important principle to be observed by the Courts is to ascertain, if that be possible, the special laws and usages governing the particular community whose affairs become the subject of litigation, and to be guided by them. The only law as to Mohunts and their office, functions, and duties is to be found in customs and practice, which are to be proved by custom.

A zemindar claiming a customary right of confirmation of the election of a Mohunt must prove the custom.

A *kararnamah* taken in troubled times from the guardian of an infant Mohunt, acknowledging the right of the zemindar to control and remove the Mohunt, is of little, if any, weight, as evidence of the custom. The superintending authority over, and the right to visit religious endowments, and prevent and redress abuses in their management, exercised by the old rulers of the country, passed to the British Government, and was exercised by it before Regulation VII. of 1817 of the Madras Presidency, which merely defined the manner in which that power was thenceforth to be exercised. RAJAH MUTTU RAMALINGA SETUPATI *v.* PERIANAYAGUM PILLAI. **L. Rep. 1 I. A. 209, 1874.**

S. C. under **Reports of Collector.**

Digitized by Google

MOKURRAREE TENURES—Presumption in favour of.

See **Enhancement of Rent. 1.**

PURMANUND v. ROOKINEE...I. L. Rep. 4 Cal. 793.

MOKURRAREE ISTAMRAREE TENURE—Escheat of.

See **Escheat. 1.**

RANEE SONWET KONWAR v. MIRZA HIMMUT BAHADOOR...L. Rep. 3 I. A. 98; I. L. Rep. 1 Cal. 391.

MONEY DECREE—Attachment and Sale of —in Execution.

See **Civil Procedure Code, Act X. of 1877, § 278.**

SULTAN KUAR v. GULZARI LAL... I. L. Rep. 2 All. 290.

See **Limitation. 25.**

BHAWANI KUER v. RIKHI RAM... I. L. Rep. 2 All. 354.

MONEY DECREE ON MORTGAGE BOND—Sale in Execution of Simple—obtained on Mortgage.

See **Sale in Execution of Decree. 4. 9.**

KHUB CHAND v. KALIAN DAS... I. L. Rep. 1 All. 240.

BALWANT SINGH v. GOKARAN PRASAD.....Ibid. 438.

See **Mortgage. 40.**

GANPAT RAI v. SARUPI.....I. L. Rep. 1 All. 446.

MONEY DECREE ON SPECIALLY REGISTERED MORTGAGE BOND—Subsequent Suit to enforce Mortgage Lien.

See **Res Judicata. 22.**

DOSS MONEY v. JONMENJOY...I. L. Rep. 3 Cal. 363.

MONEY DECREE UNCONNECTED WITH MORTGAGE, OBTAINED BY MORTGAGEE—Sale in Execution of—Notice of Mortgage.

See **Mortgage. 3.**

TUKARAM v. RAMCHANDRA...I. L. Rep. 1 Bom. 314.

See **Sheriff's Sale. 3.**

BHUGGOBUTTY v. SHAMA CHURN... I. L. Rep. 1 Cal. 733.

MONEY AND JEWELS DEPOSITED IN COURT IN LIEU OF SECURITY TO STAY EXECUTION OF A DECREE—Application to recover—Limitation.

See **Execution of Decree. 4.**

SHEO GHOLAM SAHOO v. RAHUT HOSSEIN...I. L. Rep. 4 Cal. 6.

MONEY OBTAINED BY COLLUSION AND FRAUD—Limitation to Suit to recover.

See **Limitation. 55.**

RAGHUMONI AUDHIKARI v. NILMONI SINGH DEO...I. L. Rep. 2 Cal. 393.

MONEY PAID OUT OF COURT—Suit to recover.

See **Adjustment of Decree. 1.**

KUNHI MOIDIN KUTTI v. RAMEN UNNI.....I. L. Rep. 1 Mad. 203.

MONEY PAID UNDER A DECREE SUBSEQUENTLY SUPERSEDED—*Suit to recover.*] In a suit by the present defendant against the present plaintiff for enhancement of rent, the Courts of first instance and the High Court made a decree for enhanced rent. The Privy Council, in 1873, reversed those decrees and held that the rent could not be enhanced. Before the date of the Privy Council judgment the present defendant obtained several other decrees for enhanced rent against the present plaintiff. No application was made by him for a review of those judgments, but in 1875 he brought this suit to recover the difference between the amount of the enhanced rent recovered and the fixed rent which he was bound to pay:—

Held by *Ainslie*, *Macpherson*, and *Markby*, JJ., following *Shama Pursad Roy Chowdhry* v. *Hurro Pursad Roy Chowdhry* (10 Moo. I. A. 203; S. C. 3 W. Rep. P. C. 11), that the original decree for enhanced rent, which was the sole basis of all the decrees made pending the appeal, having been reversed by the Privy Council, all subsequent decrees which were mere subordinate and dependent decrees were superseded by the Privy Council's decision, and that the plaintiff was entitled to recover.

Per Garth, C.J., and *Jackson*, J.—That the decree made by the Privy Council did not super-

Digitized by Google

MONEY PAID UNDER A DECREE SUBSEQUENTLY SUPERSEDED—*contd.*

sede or modify the several decrees obtained by the defendant for enhanced rent, and that the plaintiff was not entitled to recover, the principle of *Marriott* v. *Hampton* (2 Smith's L. C. 375, 6th Ed.) applying. *Shama Purshad's* case *ubi supra*, distinguished. JOGESH CHUNDER DUTT v. KALLI CHURN DUTT...**I. L. Rep. 3 Cal. 30; 1 Cal. Rep. 5, 1877, F. B.**

MONEY PAID BY MISTAKE IN EXCESS IN EXECUTION OF DECREE—Suit to recover.

See **Act XXIII. of 1861, § 11. 2.**

AGRA SAVINGS BANK v. SRI RAM MITTER...**I. L. Rep. 1 All. 388.**

MONEY PAID UNDER MISTAKE OF FACT.

See **Contract. 11.**

SHUGAN CHAND v. GOVERNMENT OF N. W. PROVINCES...**I. L. Rep. 1 All. 79.**

MONEY PAID UNDER TAX ILLEGALLY LEVIED—Suit to recover.

See **Madras Act III. of 1871.**

LEMAN v. DAMODARAYA.....**I. L. Rep. 1 Mad. 158.**

MONEY PAID DURING WRONGFUL POSSESSION—For Government Revenue—Right to recover—Set-off.

See **Right to recover Government Revenue paid during Wrongful Possession.**

TILUCK CHAND v. SOUDAMINI DASI...**I. L. Rep. 4 Cal. 566.**

MONEY UNDULY REALIZED IN EXECUTION OF DECREE — Recoverable by Application in Execution without Separate Suit.

See **Execution of Decree. 6.**

PARTAB SINGH v. BENI RAM...**I. L. Rep. 2 All. 61.**

MOOKTEAR — Application by—on behalf of Judgment Creditors — Act VIII. of 1859, § 207.

See **Execution of Decree. 2.**

ANTOO MISSREE v. BIDHOOMOOKHEE DABEE...**I. L. Rep. 4 Cal. 605.**

MORTGAGE — Acknowledgment of Mortgagors' Title.

See **Acknowledgment of Mortgagors' Title.**

—— by Administrator of a Minor's property without previous Sanction of Court — Purchaser with Notice.

See **Mortgage. 29. 30.**

—— Adverse possession by Mortgage.

See **Mortgage. 37.**

—— of Ancestral Property.

See the Index heading **Alienation of Ancestral Property.**

—— Apportionment of.

See **Apportionment of Mortgage Debt.**

HIRDY NARRAIN v. SYED ALLAOOLLAH...**I. L. Rep. 4 Cal. 72.**

—— Assignment of—Registration.

See **Assignment of Mortgage.**

GANPAT PANDURANG v. ADARJI DADABHAI.....**I. L. Rep. 3 Bom. 312.**

—— Assignment of—Registration.

See **Registration. 7.**

SATRA v. VISRAM...**I. L. Rep. 2 Bom. 97.**

—— Conditional Sale—Foreclosure of—Effect of.

See **Hindu Law—Ancestral Property.**

SHAM NARAIN SINGH v. RUGHOOBURDYAL.....**I. L. Rep. 3 Cal. 506.**

—— By Conditional Sale—Redemption.

See **Mortgage. 12.**

—— Covenant not to alienate.

See **Sale in Execution of Decree. 4.**

KHUB CHAND v. KALIAN DASS... **I. L. Rep. 1 All. 240.**

And *see* **Mortgage. 18. 19. 20. 23.**

—— *Dam-dupat*—Application of Rule of—to.

See **Assignment of Mortgage.**

GANPAT v. ADARJI...**I. L. Rep. 3 Bom. 312.**

Digitized by Google

MORTGAGE—*contd.*

See **Hindu Law—Interest. 3.**
See **Mortgage. 3.**
See **Interest. 4.**
DEEN DOYAL *v.* KYLAS CHUNDER... **I. L. Rep. 1 Cal. 92.**

—— By Deposit of Title Deeds.
See **Equitable Mortgage. 1.**
DAYAL JAIRAZ *v.* JIVRAJ RATANSI. **I. L. Rep. 1 Bom. 237.**

—— Emblements.
See **Emblements.**
LAND MORTGAGE BANK *v.* VISHNU. **I. L. Rep. 2 Bom. 670.**

—— Equitable.
See **Equitable Mortgage.**
See **Principal and Surety. 4.**
POGOSE *v.* BANK OF BENGAL...**I. L. Rep. 3 Cal. 174.**

—— Of Family Ancestral House.
See **Hindu Law — Alienation of Ancestral Property. 1.**
BIKHAN DAS *v.* PURA...**I. L. Rep. 2 All. 141.**

—— By Father during Son's Minority—Suit to enforce Mortgage—*Onus Probandi.*
See **Onus Probandi. 7.**
BHEEKNARAIN SINGH *v.* JANNUK SINGH.....**I. L. Rep. 2 Cal. 438.**

—— Foreclosure—of First of two Mortgages of same Property to same Mortgagee — Merger.
See **Mortgage. 10.**

—— Foreclosure—Limitation to Suit for.
See **Assignment of Mortgage.**
GANPAT *v.* ADARJI...**I. L. Rep. 3 Bom. 312.**
See **Limitation. 17.**
RAMCHANDRA *v.* JUGGUTMONMOHINEY...**I. L. Rep. 4 Cal. 283.**

—— Foreclosure — by One of Several Joint Mortgagees.
See **Mortgage. 17.**

—— Foreclosure—Re-opening.
See **Mortgage. 10.**

MORTGAGE—*contd.*

—— Foreclosure — Right of Subsequent Mortgagee to Notice of.
See **Beng. Reg. XVII. of 1860, § 8. 1.**
DIRGAJ SINGH *v.* DEBI SINGH...**I, L. Rep. 1 All. 499.**

—— Foreclosure—Service of Notice of—Proof —Judge's Office Ministerial — Admission of Service by some of several Mortgagors.
See **Mortgage. 13.**

—— Foreclosure — Service of Mortgagee's Application for — with Judge's *Perwanna*, Imperative.
See **Mortgage. 14.**

—— Form of Decree.
See **Hindu Law — Undivided Family. 7.**
LUCHMI DAI KOORI *v.* ASMAN SINGH.....**I. L. Rep. 2 Cal. 213.**

—— By Hindu Widow.
See **Miras. 5.**
RAMCHANDRA *v.* BHIMRAV. **I. L. Rep. 1 Bom. 577.**

—— By Holder of Certificate to Collect Debts.
See **Power of Grantee of Certificate to Collect Debts to Mortgage.**
MUNIA BALAK RAM...**I. L. Rep. 2 All. 513.**

—— Of Indigo Factory—Liability of Mortgagee.
See **Indigo Factories. 1.**
MONOHUR DOSS *v.* MCNAGHTEN... **I. L. Rep. 3 Cal. 231.**

—— Interest—Application of Rule of *Damdupat.*
See **Assignment of Mortgage.**
GANPAT *v.* ADARJI...**I. L. Rep. 3 Bom. 312.**
See **Hindu Law — Interest. 3,** and **Mortgage. 3.**
See **Interest. 4.**
DEEN DOYAL *v.* KYLAS CHUNDER... **I. L. Rep. 1 Cal. 92.**

—— Interest after Due Date of—Bond containing Agreement for Interest up to Due Date—Discretion to award.

Digitized by Google

MORTGAGE—*contd.*

See **Interest. 1. 3.**

DEEN DOYAL *v.* HET NARAIN...I. L. Rep. 2 Cal. 41.

BALDEO *v.* GOKAL I. L. Rep. 1 All. 603.

—— *Kanam* and *Otti.*

See **Kanam Mortgage.**

KESHAVA *v.* KESHAVA.....I. L. Rep. 2 Mad. 45.

—— Of Lands in different Districts—Suit to redeem.

See **Jurisdiction. 4.**

GIRDHAREE *v.* SHEORAJ.....I. L. Rep. 1 All. 431.

—— Of Lands partly in Oudh and partly in the N. W. P.—Foreclosure—Jurisdiction.

See **Mortgage. 24.**

—— Merger of.

See **Mortgage. 10. 25.**

See **Merger.**

GOLUKNATH MISSER *v.* LALLA PREMLAL...I. L. Rep. 3 Cal. 307.

—— Of Minor's Property.

See **Mortgage. 29. 30.**

See the Cases under **Alienation by Guardian.**

See **Sale by Guardian** and **Mahomedan Law—Sale by Guardian.**

—— Of *Miras* Lands.

See **Miras. 5.**

And *see* **Mortgage. 3.**

—— Money Decree Obtained on—does not destroy Mortgage Lien.

See **Mortgage. 39.**

—— Money Decree Obtained on—Sale—Right of Purchaser.

See **Sale in Execution of Decree. 4. 9.**

KHUB CHAND *v.* CALLIAN DAS... I. L. Rep. 1 All. 240.

BALWANT SINGH *v.* GOKARAN PRASAD .....Ibid. 433.

See **Mortgage. 40.**

MORTGAGE—*contd.*

—— Money Decree unconnected with Mortgage, obtained by Mortgagor—Sale in Execution—Notice.

See **Mortgage. 3.**

See **Sheriff's Sale. 3.**

BHUGGOBUTTY *v.* SHAMA CHURN... I. L. Rep. 1 Cal. 337.

—— Money Decree Obtained on Specially Registered—Subsequent Suit to enforce Mortgaged Lien.

See **Res Judicata. 22.**

Doss MONEE *v.* JONMENJOY...I. L. Rep. 3 Cal. 363.

—— Notice of—on Sale in Execution of Money Decree obtained by Mortgagee.

See **Mortgage. 3.**

See **Sheriff's Sale. 3.**

BHUGGOBUTTY *v.* SHAMA CHURN... I. L. Rep. 1 Cal. 337.

—— Parties to Suit on.

See **Mortgage. 2.**

See **Parties to Suit. 1. 5.**

—— "*Pernarthum.*"

See **Mortgage. 21.**

—— with Power of Sale.

See **Mortgage. 31. 32. 33.**

—— with Power of Sale—Power of Executors to create.

See **Executors—Power of. 1.**

SEALE *v.* BROWN.....I. L. Rep. 1 All. 710.

—— Priority.

See **Constructive Fraud.**

SALAMAT ALI *v.* BUDH SINGH... I. L. Rep. 1 All. 303.

—— Priority between Mortgagee in Possession under Registered Mortgage and under Purchase at Sale in Execution of Money Decree obtained by Prior Unregistered Mortgagee — and Prior Unregistered Mortgage for Rs. 50 without Possession.

See **Mortgage. 5.**

—— Priority between Purchaser at Sale in Execution of Decree on Mortgage, and Purchaser from Prior Grantee of Mortgagor, of Subsequent Mortgagee.

See **Mortgage. 6. 25.**

Digitized by Google

MORTGAGE—*contd.*

—— Priority between Registered Mortgage (under Act XX. of 1866), and Deed which might have been but was not registered under Act XIX. of 1843.

See **Registration. 32.**

KHANDU *v.* TARACHAND.....**I. L. Rep. 1 Bom. 574.**

—— Priority of Registered Mortgage over Subsequent Sale with Possession.

See **Registration. 3.**

SHRINGAPURE *v.* PETHE...**I. L. Rep. 2 Bom. 262.**

—— Priority between Registered and Unregistered Mortgages of which Registration is Optional.

See **Registration. 20.**

AHMAD BAKSH *v.* GOBINDI...**I. L. Rep. 2. All. 216.**

—— Priority between Registered Mortgage of which Registration Compulsory, under Act VIII. of 1871, and Unregistered Deed of which Registration Optional, under Act III. of 1877 or otherwise.

See **Registration. 25. 26.**

BHOLANATH *v.* BALDEO.....**I. L. Rep. 2 All. 198.**

OGHRA SINGH *v.* ABLAKH KOOER. **I. L. Rep. 4 Cal. 536.**

—— Of Property Not *in esse*—Stamp.

See **Mortgage. 22.**

—— Of Proprietary Rights in a Mahal.

See **Act XVIII. of 1873, § 7. 2.**

BHAGWAN SINGH *v.* MURLI SINGH. **I. L. Rep. 1 All. 459.**

—— Of Proprietary Rights in a Mahal followed by Sale—Right of Mortgagor to hold *Sir* Lands.

See **Act XVIII. of 1873, § 7. 1.**

BAKHAT RAM *v.* WAZIR ALI...**I. L. Rep. 1 All. 448.**

—— Redemption—Acknowledgment of Mortgagor's Title Made before Act XIV. of 1859.

See **Acknowledgment of Mortgagor's Title. 2.**

DAIA CHAND *v.* SARFARAZ ALI... **I. L. Rep. 1 All. 425.**

MORTGAGE—*contd.*

—— Redemption—Acknowledgment of Mortgagor's Title Signed by Mortgagee's Agent.

See **Acknowledgment of Mortgagor's Title. 3.**

RAHUMANI BIBI *v.* HULASA KUAR. **I. L. Rep. 1 All. 642.**

—— Redemption—Acknowledgment of Mortgagee's Title—Signature by Mortgagees, as such, of Record of Rights and *Khatauni Shara Asamiwar.*

See **Acknowledgment of Mortgagor's Title. 1.**

DAIA CHAND *v.* SARFARAZ...**I. L. Rep. 1 All. 117.**

—— Redemption—Adverse—Possession—Limitation.

See **Mortgage. 37.**

—— Redemption—Conditional Decree.

See **Mortgage. 35. 36.**

—— Redemption of Mortgage in Oudh.

See **Act I. of 1869. 1.**

RAJAH KISHEN PANDAY *v.* NARRENDAR SINGH...**L. Rep. 3 I. A. 85.**

—— Redemption of—by One of Several Mortgagors—Right to Contribution.

See **Contribution. 1.**

HIRA CHUND *v.* ABDAL.....**I. L. Rep. 1 All. 455.**

—— Redemption, Suit for—*Onus Probandi.*

See **Onus Probandi. 6.**

RATAN KUAR *v.* JIVAN SINGH...**I. L. Rep. 1 All. 194.**

—— Redemption Suit—Set-off of costs.

See **Mortgage. 38.**

BRIJNATH DASS *v.* JUGGERNATH DASS.....**I. L. Rep. 4 Cal. 742.**

—— Re-Entry by Mortgagor—on Satisfaction of Prior Mortgagee who had ousted Second Mortgagee.

See **Dispossession of Second by First Mortgagee.**

NARAIN SINGH *v.* SHIMBHOO SINGH...**L. Rep. 4 I. A. 15.**

Digitized by Google

MORTGAGE—*contd.*

—— Registered—entitled to Priority over Subsequent Registered Sale with Possession.

See **Registration. 3.**

And *see* **Mortgage. 1.**

—— Registered—under Act XX. of 1866 not entitled to Priority over Deed which might have been but was not registered under Act XIX. of 1843.

See **Mortgage. 25.**

See **Registration. 32.**

KHANDU *v.* TARACHAND.....**I. L. Rep. 1 Bom. 574.**

—— Registered and Unregistered — of which Registration Optional—Priority.

See **Registration. 20.**

AHMAD BAKSH *v.* GOBINDI...**I. L. Rep. 2 All. 216.**

—— Registered—of which Registration Compulsory— Priority between — and Unregistered Deed of which Registration Optional.

See **Registration. 25. 26.**

BHOLANATH *v.* BALDEV...**I. L. Rep. 2 All. 198.**

OGHRA SINGH *v.* ABLAKH KUAR. **I. L. Rep. 4 Cal. 536.**

—— Registration of.

See the Index heading **Registration.**

—— Sale convertible into.

See **Sale convertible into Mortgage. 1. 2.**

SUBHABHAT *v.* VASUDEVBHAT...**I. L. Rep. 2 Bom. 113.**

BAPU *v.* SENVARAYA...**Ibid. 231.**

—— Specially Registered—Decree on.

See **Sale in Execution of Decree. 5.**

AKHE RAM *v.* NAND KISHORE...**I. L. Rep. 1 All. 236.**

—— Specially Registered Mortgage Bond—Decree on—Subsequent Suit to enforce Lien against Mortgaged Property.

See **Res Judicata. 22.**

DOSS MONEY *v.* JONMENJOY...**I. L. Rep. 3 Cal. 363.**

MORTGAGE—*contd.*

—— Specific Performance of Agreement to lend Money on.

See **Specific Performance. 2.**

ANAKAVAN KASMI *v.* SAIDAMADATH AVULLA...**I. L. Rep. 2 Mad. 79.**

—— Of Undivided Share by Member of Undivided Mitakshara Family—Right of Survivors to recover, on Mortgagor's Death.

See **Hindu Law—Alienation of Ancestral Property. 3.**

MUSST. PHOOLBAS KUNWUR *v.* LALLA JOGESHUR SAHOY...**L. Rep. 3 I. A. 7; I. L. Rep. 1 Cal. 226.**

—— Of Unrecognized Portion of a *Bhag* in a *Bhagdari* Village.

See **Bombay Act V. of 1862, §§ 1 and 3.**

RANCHODAS *v.* RANCHODAS ...**I. L. Rep. 1 Bom. 581.**

—— Usufructuary.

See **Mortgage. 12, 27, 28, 36, 41.**

—— Usufructary—Redemption — Decree for—though Mortgagor's Allegation that Mortgage satisfied not proved.

See **Mortgage. 36.**

1.—— *Registration—Possession.*] A registered mortgage without possession is entitled to priority over a subsequent registered sale accompanied by possession.

By a duly registered deed of mortgage, *D.* in 1864 mortgaged land to the plaintiff. The mortgage deed provided for the sale of the lands in the event of failure to repay the sum advanced. On default made, plaintiff brought a suit to enforce this provision. Pending the suit, *D.* sold the lands to the defendant, who registered his deed of sale and obtained possession. The plaintiff subsequently obtained a decree, and in execution became the purchaser himself. He then sued the defendant to recover possession.

Held, that he was entitled to recover. His rights as mortgagee were made as effectual by registration, as by possession, so as to prevent their being impaired by subsequent transactions, and those rights included the right to bring the whole of the property, as it subsisted at the time of mortgage, to sale. It was so brought to sale, and the purchaser in execution acquired a right

Digitized by Google

MORTGAGE—*contd.*

free from any created subsequently to the mortgage and subject to it. S. B. SHRINGAPURE *v.* S. B. PETHE. *West* and *Pinhey*, JJ...**I. L. Rep. 2 Bom. 662, 1878.**

2. —— *Suit to enforce—Parties.*] It is not incumbent on a registered mortgagee, seeking to enforce his lien, to search for subsequent incumbrancers or purchasers, in order to make them parties to the suit. In the absence of notice, he would properly proceed against the person *primâ facie* liable to him, and the mere registration of a subsequent sale or mortgage would not amount to notice. S. B. SHRINGAPURE *v.* S. B. PETHE. *West* and *Pinhey*, JJ....**I. L. Rep. 2 Bom. 662, 1878.**

S. C. under **Parties to Suit. 5.**

3. *Of* Mirasi *Land by a Hindu Widow*—Razinama—*Interest.*] *D.*, the widow of a Hindu *Mirasdar*, by a duly registered deed dated 24th November 1869, mortgaged the *Mirasi* land of her deceased husband to *R. M.* for Rs. 150. Subsequently she executed, on the 5th July 1872, a *rasinama* relinquishing the land in favour of *R. G.*

Held, that the mortgage bound *D.*'s estate in the *Mirasi* land as a Hindu widow; that whether the property was regarded as *Mirasi* or as that of an ordinary occupant, it was transferable under § 36 of Bombay Act I. of 1865; that when *D.* executed the *rasinama* there was nothing left in her to relinquish, or otherwise deal with more than the equity of redemption; and that, therefore, *R. G.* took nothing by the *rasinama* except this equity of redemption. The distinction between this case and that of a purchase at a sale for arrears of land revenue is that at such last-mentioned sale the purchaser takes the land discharged of all incumbrances, inasmuch as the Government land revenue is a paramount charge on the land.

Interest allowed not exceeding the principal following the rule of *Dam-dupat*. RAMCHANDRA MANKESHVAR *v.* BHIMRAV RAVJI. *Westropp*, C.J., and *Melvill*, J...**I. L. Rep. 1 Bom. 577, 1877.**

S. C. under **Hindu Law—Interest. 3.**

4. —— *Sale—Estoppel.*] The three senior members of an undivided Hindu family—the remaining member of which had absconded—executed to the plaintiff in November 1870 a mortgage, duly registered, and setting forth a

MORTGAGE—*contd.*

ground of necessity, of a piece of land which formed part of the family estate. Certain judgment creditors of the absent member subsequently attached and sold his share in the said land under their decree. The plaintiff's undivided son bought it, and in 1872 resold his right, title, and interest therein to the defendant's father, without disclosing the existence of the mortgage. In 1874 the plaintiff obtained a decree on his mortgage, and attached the land, but the attachment was removed on the application of the defendant's father.

In a suit by the plaintiff to establish his right to the whole of the land included in his mortgage:—

Held, that the mortgage being, under the circumstances, valid, the sale of the share of the absent member was subject to the lien created, and the purchase of that share by the mortgagee's son, and his sale of it to the respondent's father, did not disturb the lien. The mortgage was registered, and the sale deed to the respondent's father set forth the vendor's title. It was a purchase of a share, and this should have put the purchaser on inquiry.

The mere want of disclosure by the plaintiff's undivided son, of his father's mortgage, was not enough to create an estoppel against the mortgagee.

If there had been any active fraud, or artifice by which the mortgagee, directly or indirectly, had prevented the purchaser from his son making the reasonable inquiry at the Registration Office, the case might have been different. R. S. JOSHI *v.* L. B. JOSHI. *West* and *Pinhey*, JJ.....**I. L. Rep. 2 Bom. 660, 1878.**

5. —— *Possession—Registration—Notice—Estoppel.*] The plaintiff claimed under a mortgage of 27th November 1871, for Rs. 50, which was neither registered nor accompanied by possession.

The defendant claimed under a mortgage of the 17th March 1873, for Rs. 150, which was both registered and accompanied by possession. The defendant, when he took his mortgage with possession, had no notice, express or constructive, of the plaintiff's mortgage.

On the 20th February 1874, the plaintiff, having obtained a money decree for Rs. 100, against the mortgagors in a suit instituted in 1873, but not in respect of the mortgage, caused the mortgaged property to be attached and sold

Digitized by Google

MORTGAGE—*contd.*

by the Court, and the defendant became the purchaser for Rs. 86 on 17th September 1874, and obtained a certificate of sale, which he did not register, dated 29th October 1874.

No notice of the plaintiff's mortgage was given at the time of the sale in execution of his money decree.

In 1874 the plaintiff obtained a decree for possession in a suit (to which the defendant was not a party) brought on the mortgage. The date of this decree did not appear in evidence. In endeavouring to enforce that decree, the plaintiff was obstructed by the defendant on 15th January 1875.

Held, that if the date of the decree were subsequent to the sale of the defendant, the decree was valueless, as neither the title to, nor the possession of, the land was then vested in the mortgagors.

Held also, that, whatever may have been the date of the decree, the plaintiff did not allege that the defendant had any notice of the plaintiff's mortgage when the plaintiff caused the Court sale to be made on the 17th September 1874 under his money decree, or that the sale was made subject to the plaintiff's mortgage; and that it was incumbent on the part of a money judgment creditor, like the plaintiff, who was causing land to be sold under his money decree, to let it be known to persons bidding for the right, title, and interest of the judgment debtor in the land, that he, the judgment creditor, held a mortgage on the same land; and that this duty was especially incumbent on a mortgagee whose mortgage was neither registered nor accompanied by possession; and that the plaintiff not having given notice, at or previously to the sale, to the purchaser, of his, the plaintiff's, mortgage on the same land, and that the sale was intended to be subject to such mortgage, was estopped from setting up and enforcing his mortgage against the defendant. TUKARAM ATMARAM *v.* RAMCHUNDRA BUDARAM. *Westropp*, C.J., and *N. Harridas*, J....**I. L. Rep. 1 Bom. 314, 1876.**

6. —— *Purchaser of Property mortgaged from Grantee of Mortgagor—Decree and Sale by Mortgagee—Auction Purchaser—Priority.*] A mortgagor cannot by a subsequent grant derogate from the rights of his mortgagee to be paid his principal, interest, and costs out of the property pledged; and the proper and only mode

MORTGAGE—*contd.*

for the mortgagee to realize his money under an ordinary Bengalee bond pledging the land, is to get a decree for it and bring the mortgaged property to sale by process of execution. When a mortgagee puts up mortgaged property for sale in execution of a decree on his mortgage, whether such decree be a decree declaring the lien, or a money decree only, he sells the entire interest that he and the mortgagor could jointly sell, and not merely the right and interest of the mortgagor as they stood at the time of the sale.

Where, therefore, *O.*, the zemindar of a certain property, mortgaged it to *H.*, and subsequently gave a patni lease thereof to *B.*, who conveyed his rights to the plaintiff; and subsequently *O.* made a gift of her zemindari rights to her son *G.*, who in 1872 sold the property to *C.*, who thus became the owner of the zemindari and patni rights of the property formerly belonging to *O.*; and on *O.*'s death *H.* in 1873 obtained a decree on his mortgage bond, ordering the money due to be realized by the sale of the mortgaged property, which was accordingly sold and purchased by the plaintiff; and *C.* claiming patni rent from the plaintiff, sued and obtained a decree against him for it, whereupon the plaintiff filed a suit to have it declared that he was not liable to pay any future rent, inasmuch as the effect of his purchase in execution of the decree on the mortgage bond was to give him a good title to the zemindari as against *C.*, the defendant:—

Held, that the plaintiff was entitled to the decree asked for, as he had purchased the entire interest which *O.* and *H.* could jointly sell, and not merely the rights and interests of *O.* as they stood at the time of the sale. MUTHORA NATH PAL *v.* CHUNDERMONEY DABIA. *Markby* and *Prinsep*, JJ.....**I. L. Rep. 4 Cal. 817, 1878.**

7. —— *Sham Decree—Innocent Purchaser.*] In 1861 *Y.* mortgaged certain lands to the defendant, who in 1864 sued upon the mortgage, and obtained a decree for sale. The decree remained unexecuted by the defendant. In 1869 the lands were sold in execution of a money decree against *Y.*, and the plaintiff became the purchaser. Thereupon the defendant attached the land in execution of the decree obtained by him in 1864. The Court found that the mortgage of 1861 was not a *bonâ fide* mortgage. In a suit for possession, *held*, that the plaintiff was entitled. The decree obtained in

Digitized by Google

MORTGAGE—*contd.*

1864, being based on a colourable mortgage, gave the defendant no claim as against a subsequent *bonâ fide* purchaser for value. What the plaintiff purchased at the execution sale in 1869, was the *real* interest of *J.* in the lands in question, not his interest as diminished by a fictitious derogation arising out of a sham transaction. GOPI VASADEV BHAT *v.* MARKANDE NARRAYAN BHAT. *West* and *Pinhey*, JJ...**I. L. Rep. 3 Bom. 30, 1878.**

8. —— *Contribution.*] *M.*, *B.*, and *N.* held mouza *D.* in equal one-third shares, and *M.* also held a share in mouza *A*. On the 3rd January 1863, *M.* and *B.* mortgaged their shares in mouza *D.* to *L.* to secure a loan of certain moneys. On the 16th March 1870, *M.*, *B.*, and *N.* mortgaged mouza *D.* to *R.* to secure a loan of Rs. 600, and on the same day, by a separate deed, they mortgaged mouza *D.*, and *M.* mortgaged his shares in mouza *A.* to *R.* to secure a loan of Rs. 1,600 On the 8th December 1875, *L.* obtained a decree for the sale of the shares of *M.* and *B.* in mouza *D.* for the satisfaction of the mortgaged debt due to her. On the 18th April 1876, *R.* obtained a decree for the realization of the mortgage debts due to him by the sale of mouza *D.* and *M.*'s share in mouza *A*. On the 23rd October 1876, the shares of *M.* and *B.* in mouza *D.* were sold in execution of *L.*'s decree, and were purchased by *R.* A portion of the purchase-money was applied to satisfy *L.*'s decree, and the balance of it was deposited in Court. Instead of applying to the Court to pay him this balance in execution of his decree, dated the 18th April 1876, *R.* attached and obtained payment of such balance in execution of a decree for money which he held against *M.* and *B.* On the 20th June 1877, *R.*, in execution of his decree of the 18th April 1876, brought to sale *N.*'s one-third share in mouza *D.*, and became its purchaser. On the 20th July 1877, *R.*, in execution of a money decree against *M.*, brought to sale his share in mouza *A.*, and became its purchaser.

Held, in a suit by *N.* against *R.* in which he claimed that the sum due by him under the two mortgages of 16th March 1870, and the decree of the 18th April 1876, might be ascertained, and that on payment of the amount so ascertained, the sale of his one-third share in mouza *D.* might be set aside, and such share declared redeemed, and that the sale of *N.*'s share in mouza *D.* could not be set aside.

MORTGAGE—*contd.*

Held also, that if it were shown that the sum realized by the sale of his one-third share in mouza *D.* exceeded the proportionate share of his liability on the two mortgages, he was entitled to recover one moiety of such excess as a contribution from mouza *A*.

As it appeared that there was such an excess, the Court gave *N.* a decree for a moiety of such excess, together with interest on the same from the date of the sale of *N.*'s share at the rate of 12 per cent. per annum, and further directed that if such moiety together with interest were not paid within a certain fixed period, *N.* would be at liberty to recover it by the sale of the share in mouza *A.*, or so much thereof as might be necessary to satisfy the debt. BHAGIRATH *v.* NAUBAT SINGH. *Turner* and *Oldfield*, JJ.....**I. L. Rep. 2 All. 115, 1879.**

9. —— *Undivided Share*—Butwara *Proceedings.*] *G. S.* was, with others of his branch of the family, joint proprietor of eight annas of mouzas *G.*, *P.*, *T. R.*, and *M.* On the application of some of the joint proprietors a butwara or partition under Regulation XIX. of 1814 was ordered by the Collector. Pending this partition, *G. S.*, by deed of conditional sale, mortgaged his eight annas interest in mouzas *G.*, *P.*, and *R.*, and in express terms excluded from the mortgage his eight annas of mouza *T. R.*, and made no mention of his interest in mouza *M.* Under the partition when completed *G. S.* had allotted to him the whole of mouzas *P.* and *R.*, 36 beegas in *G.*, and another mouza, *J.*, not mentioned in the mortgage deed. The right, title, and interest of *G. S.* in the several mouzas thus allotted to him was subsequently sold to the defendants, in execution of decrees against him.

The mortgagee obtained an order for foreclosure of his mortgage under the provisions of Regulation XVII. of 1806, and subsequently sued the representatives of *G. S.*, and the defendants for a determination of his title to, and possession of, all the mouzas *P.* and *J.*, and eight annas of *T. R.*, and that portion of mouza *M.* which had been allotted to *G. S.*:—

Held, that the mortgage by *G. S.* of his undivided share might be enforced against the properties allotted to him under the butwara, in lieu of such share, both as against *G. S.* himself, and as against the defendants, purchasers of his right, title, and interest in execution of decrees against *G. S.*

Digitized by Google

MORTGAGE—*contd.*

The mortgage, being of the undivided share of *G. S.*, could not affect the interests of the other sharers; and the mortgagee, who took the security subject to the right of those sharers to enforce a partition, and thereby convert what was an undivided share of the whole into a defined portion held in severalty, could not successfully have sought to charge any other parcel of the estate in the hands of the former co-sharers. BYJNATH LALL *v.* RAMOODEEN CHOWDRY...**L. Rep. 1 I. A. 106, 1873; S. C. 21 W. Rep. 233.**

See SHARAT CHUNDER BURMON *v.* HURGOBINDO BURMON...**I. L. Rep. 4 Cal. 510.**

Under **Partition by the Revenue Authorities.**

10. —— *Merger — Foreclosure — Proceedings on the first of two Mortgages of the same Property to the same Mortgagee.*] On the 26th March 1872, the defendant, *K. S.*, mortgaged to *G. B.*, by way of conditional sale, a half-share in five different properties, for Rs. 12,000. On the 9th May 1872 (the first mortgage being unpaid), the defendant gave *G. B.* another mortgage by way of conditional sale of the same properties that were mortgaged by the prior deed, and also of three other properties, for Rs. 24,000, to be repaid on 9th May 1873. On the 29th July 1873, *G. B.* served the defendant with notice to foreclose the properties mortgaged by the deed of the 26th March 1872. On the 23rd March 1874, the defendant's half-share in one of the five properties mortgaged by the deed of 26th March 1872 was sold for arrears of revenue, and the plaintiff became the purchaser, subject to the mortgages then existing on it. The plaintiff, to protect his interest, arranged with *G. B.* to purchase from him his entire interest in the two mortgages; and on the 3rd June 1874 an assignment was made by *G. B.* of all his interest as mortgagee in the mortgaged property to *B. M.*, as trustee for the plaintiff, the assignment being expressly stated to have thus been made to a trustee to prevent a merger of the mortgagor's interest in that of the mortgagee as regards the property sold for arrears of the land revenue.

The plaintiff, on 28th April 1875, filed a suit (making his trustee *B. M.* a co-plaintiff) seeking to obtain possession of three of the properties mortgaged by the first deed, by force of the foreclosure proceedings, and to obtain a declaration that he was entitled, by virtue of his purchase, as well as of the foreclosure proceedings, to a proprietary right in the property purchased at the revenue sale.

MORTGAGE—*contd.*

Pending this suit, the plaintiff brought another suit against the same defendant to recover the amount of the mortgage debt and interest due on the second mortgage:—

Held, that the assignment of the mortgages to a trustee for the plaintiff, operated to prevent a merger of the mortgagor's and mortgagee's interests, and consequent extinguishment of the mortgage debt; but that the plaintiff, who was beneficial owner of the property purchased at the revenue sale, subject to the mortgages, and as such liable, conjointly with the owners of the other mortgaged properties, to pay his proportion of the entire mortgage debts, could not foreclose the first mortgage to satisfy the debt due under it, and then sue the defendants personally for the debt due on the second mortgage as though that debt were not a charge upon the mortgaged property at all, and he himself were not liable for his proportion of it.

Quære, whether the plaintiff under the circumstances had any right to foreclose the first mortgage. The effect of bringing the second suit was to re-open the foreclosure and prevent the foreclosure proceedings being confirmed or sanctioned, and enabled the Court to make a decree in the whole case. KALIPROSONNO GHOSE *v.* KAMINI SOONDURI CHOWDRAIN, *Garth*, C. J., and *McDonnell*, J...**I. L. Rep. 4. Cal. 475; 3 Cal. Rep. 184, 1878.**

11. —— *First and Second Mortgagees—Assignment by Mortgagee—Rights of Assignees.*] In March 1865, the proprietors of a four-annas share in a certain village mortgaged it to *R.*, placing him in possession. Under the terms of the mortgage, the mortgagee was entitled to the profits in lieu of interest, and the mortgagors were entitled to redeem on payment of the rincipal without interest. In April 1865, *R.* sub-mortgaged the share to *S.* and others, retaining possession of the share. In February 1869, the proprietors again mortgaged the share to *R.* for a further advance. Under this mortgage, *R.* was entitled to the profits in lieu of interest, and the mortgagors were entitled to redeem the whole share on payment of the principal due on both mortgages without interest, or a certain portion of the share on payment of a proportionate amount of such sums with-

Digitized by Google

MORTGAGE—*contd*

out interest, or a certain portion of the share on payment of a proportionate amount of such sums without interest on the 15th Jeth Sudi of any year. In August 1872, *S.* and his co-mortgagees obtained a decree against *R.* on the mortgage of 1865, directing that *R.*'s rights and interests under the mortgage of 1865 should be sold. In May 1874, *R.* assigned by sale to *N.* his rights and interests under the mortgage of February 1869, he retaining possession of the share. In April 1877, the rights and interests of *R.* under the mortgage of 1865 were sold in execution of the decree of 1872, and were purchased by the decree-holders, who obtained possession. In a suit brought by *N.* against *S.* and his co-mortgagees, for possession of the share, in virtue of the assignment of May 1874, and for mesne profits :—*Held*, that the defendants, by reason of their interest as sub-mortgagees of the whole four-annas share under the first mortgage to *R.*, and as purchasers under the decree they obtained against him of his interest under the first mortgage, were entitled to possession of the property as mortgagees, in preference to the plaintiffs, who had only obtained an assignment of the interest of *R.* under the second mortgage made to him. SAHAI PANDEY *v.* SHAM NARAIN. *Pearson* and *Oldfield*, JJ.....**I. L. Rep. 2 All. 142, 1879.**

12.—— *Usufructuary Mortgage — Agreement for Absolute Sale of Mortgaged Property in Default of Payment on Date fixed for Redemption —Mortgage by Conditional Sale.*] By a deed purporting to be a deed of usufructuary mortgage, dated the 2nd July 1815, the mortgagors agreed to pay to the mortgagees, who were put in possession, 2,500 *pons* with interest at one *fanam* per ten *pons* per mensem ; stipulating that the income of the mortgaged property should be applied, first in payment of the Government assessment, secondly in payment of the salary of a manager, and thirdly in reduction of the mortgage debt. It was then provided that the mortgage debt should be repaid by instalments ; *viz.*, 500 *pons* on the 9th April 1816, 500 on the 10th April 1817, and 500 in 1820. As to the balance then remaining due, the mortgagor covenanted as follows :—" That in the year 1819-20 a settlement of the accounts of the receipts and disbursements shall be made, and any amount that may be due after deducting payments made out of principal and interest as aforesaid, we undertake to pay in full on the 30th of Pangani of the

MORTGAGE—*contd.*

said year, and to redeem the mortgage. If by the 30th of Pangani the money be not paid up in full, and a balance still remain due, you yourself shall take, hold, and enjoy such of the lands (herein) as you may like, and as may be equivalent to the balance due, at *pons* 50 per *veli*, as if under the terms of a deed of absolute sale. The said *pedagai* (hamlet) consists of *velis* 25, *mans* 7, and *gulis* $76\frac{7}{18}$, and their value is *pons* 1,269 and *fanams* $3\frac{1}{2}$. If the balance due exceed this amount, the 25 *velis*, 7 *mans*, and $76\frac{7}{18}$ *gulis* of the land aforesaid shall pass to you, as under an absolute sale, for 1,269 *pons* and $3\frac{1}{2}$ *fanams*, and any balance that may thereafter remain due you shall recover from our other property." No instalments were ever paid, and no settlement of accounts took place in 1820, or subsequently.

Assuming the transaction to be one of mortgage, the debt was liquidated by the usufruct at the close of the year 1866-67 :—

Held, that the transaction was not one of a mortgage by conditional sale, and that the mortgagors were entitled to recover the lands with mesne profits from 1866-67 ; and that there was no reason for presuming that the very special agreement contained in the deed of the 2nd July 1815, for the purchase of the property in certain events, was carried out between the parties according to its terms, the contemplated settlement of accounts being a necessary preliminary to the performance of that contract. The essential characteristic of a mortgage by conditional sale is that, on the breach of the condition, the contract executed itself, and the transaction was closed and became one of absolute sale without any further act of the parties or accountability between them. That it still has this effect in the Presidency of Madras was what was decided by the case of *Pattabhiramier* v. *Vencatrow Naicken and another* (13 Moo. I. A. 560) which decided that the contract of mortgage by conditional sale is a form of security known under various names throughout India ; that according to the ancient law of India it was enforceable according to its letter, and that whether it was embodied in one instrument or in two separate instruments, and whether or not the transaction appeared on the face of the instrument to be in its inception a mortgage ; and further, that this law must be taken to prevail in every part of India in which it has not been modified either by actual legislation or by established practice. The subject-

Digitized by Google

MORTGAGE—*contd.*

matter of the decision, therefore, is the contract of mortgage by conditional sale. But having regard to the new course of decision that has sprung up at Madras and Bombay since 1858 (in its origin radically unsound) upon mortgages by conditional sale, recognizing and enforcing the right of redemption, although any number of years may have elapsed since the mortgagee's title under the terms of the deed would have become absolute, unless the right to redemption is barred by the law of limitation; *quære*, whether the decision in 13 Moo. I. A. 560 will be followed in the case of a mortgage by conditional sale executed since 1858. THUMBASAWMY MUDELY *v.* MAHOMED HOSSAIN ROWTHEN...**L. Rep. 2 I. A. 241, 1875; I. L. Rep. 1 Mad. 1.**

13. —— *Notification of Foreclosure—Beng. Reg. XVII. of* 1806, § 8—*Proof of Notice—Redemption—Admission of Notice by some Mortgagees.*] In a suit by the heirs of the mortgagees of certain property, for possession and registration of names, against the mortgagors thereof, and certain purchasers of the equity of redemption in part thereof, it appeared that proceedings had been taken to obtain foreclosure under Reg. XVII. of 1806; that no sufficient proof of notification under § 8 of the Regulation, to the mortgagors, of the plaintiff's petition of foreclosure had been given in the suit; that the Zillah Judge in the foreclosure proceedings had found due service of the foreclosure petition on a mere statement to that effect by the Nazir; and that six out of nineteen mortgagors had admitted due service of the petition.

Held, (1) that the condition of foreclosure required by § 8 of Reg. XVII. of 1806, is that the mortgagor should be furnished with a copy of the petition, and should have a notification from the Judge, in order that he may within a year from the time of such notice redeem the property; and in an action of this sort, brought to recover possession as upon a foreclosure, it was essential for the plaintiff to satisfy the Court that this condition had been complied with.

2. The functions of the Judge under § 8 of Reg. XVII. of 1806 in foreclosure proceedings are purely ministerial, and service of the petition therein must be strictly proved in a suit to enforce them.

3. The finding of the Zillah Judge in the foreclosure proceedings, so far from being conclusive, was not even *primâ facie* evidence in the

MORTGAGE—*contd.*

suit of service, sufficient to shift the onus of proof in regard thereto.

4. The year allowed for redemption runs from the date of service of the notification, and not from the date of the Judge's order on the petition. *Mohesh Chunder Sein* v. *Musst. Tarinee.* (10 W. Rep., F. B. 27) approved.

5. The mortgage being for one entire sum, of one entire share of property redeemable only on payment of the entire sum, and foreclosure being sought to be enforced not against the individual share of each mortgagor, but against the whole estate, as upon one mortgage, one debt and one entire right against all, service of the notification on the abovementioned six mortgagors would be insufficient to warrant the foreclosure of the whole property, or any part of it.

6. The purchasers of the equity of redemption, whether they had taken possession or not, having purchased prior to the foreclosure proceedings, ought to have been duly served with notice of foreclosure. The mortgagee when he seeks to foreclose, must discover and serve the persons who are then owners of the estate. NORENDER NARAIN SINGH *v.* DWARKA LAL MUNDUL...**L. Rep. 5 I. A. 18, 1877; I. L. Rep. 3 Cal. 397; 1 Cal. Rep. 369.**

14. —— *Beng. Reg. XVII. of* 1806—*Service of Notice of Foreclosure.*] The provisions of § 8 of Beng. Reg. XVII. of 1806, that a copy of the mortgagee's application to foreclose is to be served with the Judge's perwanna referred to in that section, are imperative, and not merely directory. Where the evidence fell short of proof that a copy of such application was served with the perwanna of the Judge's:—*Held*, that such failure of proof was fatal to the plaintiff's suit to recover possession of the mortgaged premises after the expiration of the year of grace.

Where the plaintiffs, the second mortgagees, who had foreclosed their mortgagor's equity of redemption, sued for possession of the mortgaged property, and alleged that their mortgagors' equity of redemption had been finally foreclosed by the first mortgagee after due proceedings and expiry of the year of grace without redemption, and that they were, therefore, entitled to absolute possession, and failed on the ground that notice of foreclosure had not been duly served:—*Held*, that they were not entitled to a decree as mortgagees for posssession subject to their accounting to the mortgagors, that being relief different from that prayed for

Digitized by Google

MORTGAGE—*contd.*

in their plaint. THE BANK OF HINDUSTAN, CHINA AND JAPAN *v.* SHOROSHIBALA DEBEE. *Kemp* and *Ainslie*, JJ.....**I. L. Rep. 2 Cal. 311, 1877.**

15. —— *Usufructuary Mortgage—Purchase by Mortgagee of Birt Tenures—Right of Mortgagor of Talook to redeem Birt Tenures within the Talook purchased by the Mortgagee.*] In a suit in 1870 to redeem a usufructuary mortgage, dated 1846, of a talookdari interest, with all its incidents, it appeared that most of the villages comprised therein were held by third persons under various *birt* tenures, valid and subsisting at the date of the mortgage, but that some of them were, in or before 1849, purchased by the mortgagee, who at the summary settlement after Lord Canning's proclamation was allowed to engage for all the villages, and to hold them as a talook, subject to rights of subsettlement. It appeared also, according to a settlement circular issued in Oudh on the 29th of January 1861, that under the *nuwabi*, *birt* tenures were presumably carved out of the talookdar's estate; that they were held under him upon terms varying according to the terms of the particular contract or *pottah*, and possibly according to the custom of the particular district; that they did not necessarily entitle the holders of them to engage directly with the Government for the revenue; that when such direct engagements took place, *malikana* was payable to the talookdar; that they were sometimes resumable, and when resumed would fall into the parent estate; and that in all cases the relation of superior lord and tenant subsisted between the talookdar and the *birtias*, but that *birts* still subsisting entitle their holders to sub-settlements under the Oudh Sub-Settlement Act, 1866. It appeared also that the mortgagee, availing himself of his position as talookdar under the mortgage, had purchased the *birts* in question in this suit for an apparently inadequate sum, and had treated them as merged in the talook, engaging for them as talookdar, and not as *birtia*, and taking no steps to keep them alive as distinct subtenures for his own benefit:—

Held, that though their lordships were not prepared to affirm the broad proposition that every purchase by a mortgagee of a sub-tenure existing at the date of the mortgage, must be taken to be made for the benefit of the mortgagor, so as to enhance the value of the mortgaged property, and make the whole, including

MORTGAGE—*contd.*

the sub-tenure, subject to the right of redemption,—for it might well be that when the estate mortgaged is a zemindary in Lower Bengal, out of which a *putnee* tenure has been granted, or one within the ambit of which there is an ancient *mokurraree istimraree* tenure, a mortgagee of the zemindary though in possession, might purchase with his own funds, and keep alive for his own benefit, that *putnee* or *mokurraree*, as in such cases the mortgagee can hardly be said to have derived from his mortgagor any peculiar means or facilities for making the purchase which would not be possessed by a stranger, and might therefore be held entitled equally with a stranger to make it for his own benefit; —yet, that, under the peculiar circumstances of this case, the mortgagor was entitled, according to equity and good conscience, and consistently with English law, upon paying the original mortgage money *plus* the purchase money of the *birts*, to redeem the estate as now enjoyed by the mortgagee. RAJAH KISHENDUTT RAM *v.* RAJAH MUMTAZ ALI KHAN...**L. Rep. 6 I. A. 145; 5 Cal. Rep. 213, 1879.**

16. —— *Ambiguous Agreement.*] A bond by which the obligees, describing themselves as residents of a particular place, hypothecate as security for the debt "their property with the rights and interests," does not create a mortgage of their property in the place in which they were described in the bond as residing. Such an agreement falls within the principle of the decisions that a general hypothecation is too indefinite to be acted on. DEOJIT *v.* PITAMBAR. *Stuart*, C.J., and *Turner*, J...**I. L. Rep. 1 All. 275, 1876.**

17. —— *Foreclosure by one of several Mortgagees.*] Where the whole of a mortgage debt was due to the persons claiming under the mortgage jointly and not severally, and a person entitled only to one moiety of the debt foreclosed the mortgage as to that moiety, and sued the different mortgagors for possession of a moiety of their interests in the mortgaged property, in virtue of the mortgage and foreclosure:—

Held, that the foreclosure was invalid and the suits were not maintainable. BISHAN DIAL *v.* MANNI RAM. *Turner* and *Oldfield*, JJ...**I. L. Rep. 1 All. 297, 1876.**

18. —— *Covenant not to alienate.*] *Y.* gave *B.* a bond for the payment of money, in which

Digitized by Google

MORTGAGE—*contd.*

he hypothecated certain immoveable property as security for such payment, covenanting not to sell or transfer such property until the mortgage debt had been paid. In breach of this condition he granted *M.* a lease of his rights and interests in such property for a term of 12½ years. *B.* having sued on such bond, and obtained a decree charging the property with the satisfaction of the decree, sued *M.* and *B.* for the cancelment of the lease, and a declaration that it would not be binding on the purchaser at the sale in execution of the decree, alleging that the lease had been granted to defeat the execution of the decree. The High Court refused, in view of its decision in *Chunni* v. *Thakur Das* (I. L. Rep. 1 All. 126), to interfere with the decree of the lower Court giving *B.* such a declaration. MUL CHAND *v.* BALGOBIND *Pearson* and *Oldfield*, JJ...**I. L. Rep. 1 All. 610, 1878.**

19. —— *Covenant not to alienate.*] *D.* mortgaged certain property to the plaintiffs by a deed which contained the following condition:—"I will not transfer the mortgaged property to any one else until the principal sum together with interest is repaid. Should I transfer it, the transfer will be illegal." In contravention of this condition, *D.* transferred his proprietary right in the mortgaged property to the defendant by a lease. The plaintiffs, having obtained a decree for the sale of the mortgaged premises, sued the defendants to set aside the lease.

Held, that the transfer made in contravention of the condition in the mortgage was not absolutely void, but voidable so far as it was a defeasance of the plaintiff's rights, and the Court declared that the lease would not be binding on the purchaser in execution of the plaintiff's decree, unless he desired its continuance. CHUNNI *v.* THAKUR DAS. *Pearson* and *Turner*, JJ...**I. L. Rep. 1 All. 126, 1875.**

20. —— *Suit for Money charged on Immoveable Property—Covenant not to alienate*] By a deed dated the 17th of April 1860, in consideration of a loan of Rs. 710, the mortgagor gave the mortgagee one-half of the profits of a certain mouza up to the end of the then current settlement, and charged the remaining one-half share of the profits with payment of the mortgage debt with interest. It was also stipulated that the mortgagee should take the management of the mouza, rendering accounts to the mortgagor, and that if the mortgagor should fail to pay the debt therein mentioned, or take another loan and fail to pay it within the term therein mentioned, the mortgagee should remain in possession of the entire mouza until payment of all that might be due. The original mortgagor having died, his heir executed a second deed on the 6th of February 1873, admiting the original charge, and the existence of a further debt of Rs. 1,000, which latter debt he undertook to discharge by the payment of Rs. 500 on a day named, and agreed that the balance should be realized by the mortgagee from half the profits of the mouza in his possession, *according to the terms of the bond* for Rs. 710, and that until the realization of the amounts entered in both the bonds the mouza should continue in the mortgagee's possession, and that the mortgagor should have no power to sell, mortgage, or alienate it. In a suit by the mortgagee on the bonds to bring to sale the mouza in satisfaction of the debts due:—

Held, that the first deed created no hypothecation of the mouza itself, but only assigned one half of the property to the mortgagee for the period of the then current settlement, and charged the residue of the profits with the mortgage; and that although if the condition against alienation in the second bond had stood alone, it might have been sufficient to create a simple mortgage of the estate, and entitled the plaintiff to an order for sale, yet the clause must be read with what preceded it, and, so read, the intention of the parties was to mortgage the profits, and not the mouza itself, nor any share in it; and the plaintiff, therefore, was not entitled to the relief sought by him. GANGA PRASAD *v.* KUSVARY DIN. *Pearson* and *Turner*, JJ.....**I. L. Rep. 1 All. 611, 1878.**

21. —— *"Pernarthum" Mortgage—Redemption—Malabar Law.*] In the case of a mortgage of the kind prevailing in certain parts of Malabar, called a "pernarthum" mortgage, when the mortgagor redeems, the mortgagee is entitled (before restoration of the mortgaged property) to be paid its market value at the time of redemption, not the amount for which it was mortgaged. P. SHEKARI VARMA VALLIA RAJAH *v.* MANGOLAM AMUGAR. *Holloway* and *Innes*, JJ.....**I. L. Rep. 1 Mad. 57, 1876.**

22. —— *Stamp Act XVIII. of* 1869, § 3, *Cl.* 18 *and* 26, *and Sched. I., Cl.* 10—*Pledge of Property not* in esse—*Evidence Act I. of* 1872, § 92—

Digitized by Google

MORTGAGE—*contd.*

Oral Agreement contradictory to Written Contract—Act VIII. of 1859, § 243—*Power of Manager appointed by Court—Lien of Manager of West Indian Estates—Salvage Lien—Estoppel, Knowledge, Acquiescence.*] *M.*, the manager of an indigo concern, under § 243 of Act VIII. of 1859, by a deed dated the 1st of February 1873, in which the owners of the concern joined, which was duly registered, and made with the Court's sanction, mortgaged the concern, and pledged the entire season's crops to *A.* and *B.*, who were *pardanashins*, to secure repayment of a large sum of money, consisting partly of the balance of previous loans from the husband of *A.* and *B.*, and partly of a new loan to the extent of what was described in the deed as the estimated outlay of the season. The deed provided that *A.* and *B.* should have a first charge on the indigo to be manufactured in the season in respect of the moneys secured thereby; that the indigo should be sold subject to *A.*'s and *B.*'s direction; that until the debt was paid off, *M.* should have no power to sell, mortgage, or transfer the properties thereby mortgaged, or in any way to deal with the sale proceeds of the manufactured indigo; and that *A.* and *B.* should have full power to arrange for the appointment and dismissal of the servants of the concern, and for its better management. Previouly to this, *viz.*, in October 1872, *M.* had, in pursuance of his letter of appointment, filed an estimate for the season's outlay largely exceeding the amount mentioned in the deed as the estimated outlay, and had alleged that, at the time of executing the mortgage deed, he had informed *C.*, who was the general manager of *A.* and *B.*, and, as such, was the only medium of communication between *M.* and *A.* and *B.*, that further advances would be necessary. According to *M.*'s account, *C.* told him that *A.* and *B.* were unable to make any further advances, and that he could, if they were needed, obtain them on the usual terms from the plaintiff's, who were indigo brokers. In previous years, during the lifetime of the husband of *A.* and *B*, who had held similar mortgages of the concern and the crops in those years to secure advances made by him, such advances had, with the mortgagees' knowledge, been supplemented by loans obtained from the plaintiffs on the security of the first crops to the extent of such loans. And it was alleged by *M.* that it was upon the understanding that the same course was to be followed in the present instance that the mortgage deed to *A.* and *B.* was executed.

MORTGAGE—*contd.*

The moneys advanced by the latter were wholly expended by April, when *M.*, without communicating with *A.* and *B.* and with only the verbal sanction of the Court, applied to the plaintiffs for a loan, and on the 26th April the plaintiffs wrote to *M.* that they would make advances to the extent of Rs. 50,000, on his assigning to them and giving them a first charge on the first 250 maunds of indigo to be manufactured in the season, and they enclosed a form of assignment for *M.*'s signature, which he signed and returned to the plaintiffs on the 3rd May. This document bore a two-rupee stamp. In September and October, *M.* obtained further advances from the plaintiffs, giving them similar letters of assignment bearing two-rupee stamps. Of the money thus advanced by the plaintiffs, Rs. 5,000 were paid to *C.* for *A.* and *B.*, by a bill drawn on the plaintiffs. About Rs. 17,000 were applied towards the expenditure of the following season, and the remainder in the production of the then season's indigo, and *M.* stated that without it he could not have manufactured any indigo that season. The indigo, when manufactured, was claimed by *A.* and *B.* under their mortgage, and their claim being resisted by *M.*, who set up the plaintiffs' rights under the letters of assignment, *A.* and *B.* sued to enforce the provisions of their mortgage deed. In this suit the indigo was attached before judgment and sent to Calcutta for sale. The plaintiffs then sued *A.* and *B.* and the holders for sale to establish their first charge in respect of their advances to *M.* on 360 maunds of the indigo on the strength of their letters of assignment:—

Held, per Garth, C.J., and *Macpherson*, J., that the letters of assignment to the plaintiffs were sufficiently stamped with an eight-annas stamp. They were not "mortgages" within the meaning of Act XVIII. of 1869, Sched. I., § 10, for, though in the nature of equitable mortgages, it could not be said that the property thereby assigned existed in British India at the time of the execution of the deed, it not having then been produced.

Held, per Garth, C.J., *Macpherson* and *Phear*, JJ., that the alleged oral agreement between *C.* and *M.* as to obtaining loans, if necessary, from the plaintiffs, and giving them a first charge on the season's indigo in respect of such loans, was in direct contravention and defeasance of the

Digitized by Google

MORTGAGE—*contd.*

mortgage deed to *A.* and *B.*, and was therefore inadmissible in evidence, under § 92 of the Evidence Act.

Held, per Garth, C.J. and *Phear*, J., that the plaintiffs were neither in the position of managers of the concern nor consignees of the indigo, and were therefore not entitled to any lien on the indigo, similar to the lien possessed by the manager or consignee of a West India estate.

Per Phear, J.—That the plaintiffs could not claim a lien on the indigo on grounds of a salvage character, it being essential to such a lien that the person spending the money of which he claims reimbursement should have some interest in the property, or some right or duty towards the owners, who are to be affected by the claim, impelling him to make the expenditure. A mere volunteer cannot in general claim such a lien. The plaintiffs stood in no such relation to the estate, or the proprietors of it, as to have cause on that ground for spending their money in the cultivation of indigo on it in the season of 1872-73, but were strangers to the estate, and in the situation of ordinary money-lenders, with no other motive than the expectation of pecuniary profit from the bargain itself.

Per Macpherson, J.—That the plaintiffs failing to prove knowledge and acquiescence on the part of *A.* and *B.* as regards the advances, and the terms on which these advances were made by the plaintiffs, even supposing those advances were absolutely necessary to enable the indigo to be manufactured, and that without them no indigo could have been manufactured, yet there was nothing in the contention that the matter could be treated in the nature of a case of salvage. *A.* and *B.* had a first mortgage, as a security for the sum advanced by them for the season's manufacture, and no reference being made to them before the loans were obtained from the plaintiffs, there was no principle of equity on which *A.* and *B.*, who were on the spot, and might at any time have appealed to, could be postponed to the plaintiffs, who were strangers brought in over their heads, without their consent, by the mortgagor.

Held, on the facts by *Garth*, C.J., *Macpherson* and *Phear*, JJ., that there was no evidence of such knowledge and acquiescence on the part of *A.* and *B.* with respect to the advances by, and the assignments to, the plaintiffs as would estop them from disputing the plaintiffs' claim.

MORTGAGE—*contd.*

Per Phear, J.—Section 243 of Act VIII. of 1859 does not authorize a Court to appoint a manager to carry on a judgment debtor's business pending execution proceedings, and to invest him with power to raise money for that purpose. Whether or not the Civil Courts in the Mofussil have the power, such as that possessed by the Court of Chancery in England and by the High Court, of managing the properties of parties to a cause, pending suit or administration, the Court's manager, under such circumstances, only acquires a right to charge his costs and expenditure against the parties to the suit, or persons who have knowingly placed themselves in a like position relative to his management, and even then he can only do so in respect of such expenditure as has been expressly sanctioned by the Court. The ground of his right is that he is the Court's officer acting under the Court's direction as between the parties to the suit, and with the Court's sanction, which cannot be rightly given without specific inquiry in each matter requiring sanction; the exercise of the Court's discretion cannot be delegated to the manager by anticipation. MORAN *v.* MITTU BIBEE. *Garth*, C.J., and *Macpherson*, J.....**I. L. Rep. 2 Cal. 58, 1876.**

On appeal from *Phear*, J.

23. —— *Covenant not to alienate.*] A bond for the payment of money, with a simple covenant not to alienate the obligor's property until payment, does not constitute a mortgage.

Therefore, where a bond executed in consideration of a loan contained the following agreement: "I promise to repay the whole principal with interest in the month of Phalgun 1271, F. S., and till the payment of the amount I will not transfer any property by conditional sale or mortgage," but contained no further proviso declaring invalid future alienations of the lands of the obligor, in the manner specified in the bond:—

Held, that the instrument did not operate as a mortgage. *Rajkumar Ram Gopal Narain Sing* v. *Ram Dutt Chowdhry* (5 Beng. L. Rep. 264) distinguished. GUNNO SINGH *v.* LALAFUT HOSAIN. *Garth*, C.J., and *Birch*, J...**I. L. Rep. 3 Cal. 336; 1 Cal. Rep. 91. 1877.**

24. —— *Property situated partly in Oudh and partly in the N. W. P.—Foreclosure—Jurisdiction—Beng. Reg. XVII. of* 1806, § 8.] Where a mortgage of land situated partly in the District of Shahjehanpur in the N. W. Provinces, and partly in the District of Kheri in the Province

Digitized by Google

MORTGAGE—*contd.*

of Oudh, was made by conditional sale, and the mortgagee applied to the District Court of Shahjehanpur to foreclose the mortgage, and render the conditional sale absolute in respect of the whole property :—

Held, in reference to the ruling of the Privy Council in *Ras Muni Dibiah* v. *Pran Kishen Das* (4 Moo. I. A. 392) that where mortgaged property is situated in two districts an order of foreclosure relating to the whole property may be obtained in the Court of either district, that the circumstance that Oudh was in some respects a distinct province from the N. W. Provinces did not take the case out of that ruling, inasmuch as Reg. XVII. of 1806 was in force in Oudh as well as in the N. W. Provinces at the time of the foreclosure proceedings. SURJAN SINGH *v.* JAGAN NATH SINGH. *Stuart*, C. J., and *Pearson*, J.....**I. L. Rep. 2 All. 313, 1879.**

25. —— *Priority—Registration—Merger—Sale in Execution of Decree on Mortgage.*] On the 15th July 1864, two undivided brothers executed a mortgage of their joint property to the plaintiff for Rs. 500, and on the 8th January 1868 they executed another mortgage of the same property for Rs. 1,000 to the defendant, who registered it under Act XX. of 1866. In August 1871, a suit was brought against the brothers on the mortgage of 1864, and in October 1871 a decree was made for the sum due, and the decree directed that in default of payment in two months the mortgaged property should be sold. In March 1872, the property was sold in execution of the above-mentioned decree, and bought by the plaintiff, who was duly put into possession. In 1871, a suit was brought against the brothers on the mortgage of 1868, by the defendant ; a decree was made similar to that in the above-mentioned suit, a sale of the property was had in execution thereof, and it was bought by the defendant. The plaintiff was thereupon dispossessed and referred to a regular suit, and the defendant was put into possession. This suit was then brought by the plaintiff to eject the defendant, and the lower Appellate Court made a decree in the plaintiff's favour. On second appeal by the defendant :—

Held, affirming the decision of the Court below, that the mortgage of 1864 did not require registration in order to maintain its priority over the mortgage of 1868.

MORTGAGE—*contd.*

Held also, that the right of the plaintiff to the security of the property pledged by the mortgage was not merged in the decree which he obtained.

Held also, that the plaintiff having bought the rights and interests of the mortgagors, and obtained possession under a sale prior to the sale to the defendant there was no right or interest left in the mortgagors to sell to the defendant, and he acquired no title against the plaintiff in point of law.

Per Kernan, J.—But the purchase by the plaintiff of the right and interest of the mortgagor was subject to the mortgage to the defendant, and as the defendant was not a party to the plaintiff's mortgage suit, the defendant's right as mortgagee was not affected by the sale.

Per Kernan, J.—Under a sale in execution of a decree for sale in a mortgage suit, the right and interest which the mortgagee and mortgagor could jointly sell pass to the purchaser. VENKATNARASAMMAH *v.* RAMIAH. *Innes* and *Kernan*, JJ.....**I. L. Rep. 2 Mad. 108, 1879.**

26. —— *Condition against Alienation.*] A mere stipulation by a judgment-debtor, against whom execution has been applied for, in a petition to the Court executing a decree, that he will not alienate his property until the decree should have been paid, does not create a charge on any particular property belonging to him. BHUPAL *v.* JAG RAM. *Stuart*, C.J., and *Oldfield*, J. .....**I. L. Rep. 2 All. 449, 1879.**

27. —— *Usufructary Mortgage followed by Sale—Revival of Mortgage by Cancelment of Sale—Redemption—Attachment in Execution of Decree—Act VIII. of* 1859, § 246.] *Z.* mortgaged in 1859 certain immoveable property, being joint ancestral property, for a term of five years, giving the mortgagee possession of the mortgaged property. In 1861, *Z.* sold this property to the mortgagee, whereupon *Z.*'s sons sued their father and the mortgagee and purchaser to have the sale set aside as invalid under the Hindu law, and in August 1864 obtained a decree in the Sudder Court setting aside the sale. The mortgagee purchaser remained, however, in possession of the property as mortgagee. In May 1867, *Z.* having sued the mortgagee for possession of the property on the ground that the sale had been set aside as invalid, the High Court held that *Z.* could not be allowed to retain the purchase money and eject the mort-

Digitized by Google

MORTGAGE—*contd.*

gagee purchaser, but must be held estopped from pleading that the sale was invalid. In November 1867, one *K.* having caused the property to be attached and advertised for sale in execution of a decree which he held against *Z.* and his sons, the mortgagee objected to the sale of the property, on the ground that *Z.* and his sons had no saleable interest in the property. The objection was disallowed by the Court executing the decree, and the rights and interests of *Z.* and his sons were sold in the execution of the decree, *K.* purchasing them. In 1878, *K* sued, as the purchaser of the equity of redemption, for the redemption of the mortgage of 1859:—

Held, that *K.* was entitled to redeem.

Held also, that the mortgagee not having contested in a suit the order dismissing his objection to the sale of the property in execution of *K.*'s decree, he could not deny that *K.* had purchased the rights and interests remaining in the property to *Z.* and his sons.

Held also, that the mortgagee had no lien on the property in respect of his purchase money.

Held also, that it being stipulated in the deed of mortgage that the mortgagee should pay the mortgagor a certain sum annually as *Malikana*, and the mortgagee not having paid such allowance since the date of the sale, the plaintiff was entitled to a deduction from the mortgage money of the sum to which such allowance amounted. BASANT RAI *v.* KANAUJI LAL. *Spankie* and *Straight*, JJ.....**I. L. Rep. 2 All. 455, 1879.**

28. —— *Usufructuary Mortgage — Jurisdiction of Small Cause Court and of Munsiff.*] *M.* and *S.* executed a document to the plaintiff, in the following terms:—"We, *M.* and *S.*, do hereby declare that we have mortgaged a house situate in Ghaziabad, owned and possessed by us, in lieu of Rs. 300, to *K.* and *G.*, for two years; that we have received the entire mortgage amount from the mortgagee, and nothing remains due; that we have put the mortgagee in possession of the thing mortgaged like ourselves; that eight annas has been fixed as monthly interest besides the rent of the house, which we shall pay from our own pocket; that we agree that we shall pay the aforesaid sum in a period of two years to the mortgagee, and get the thing mortgaged redeemed; that if we fail to pay the mortgage amount within the period of two years, the mortgagee shall be at liberty to recover the mortgage amount in any way he pleases."

MORTGAGE—*contd.*

In a suit brought upon this instrument to recover the principal amount advanced, and rent and interest, amounting in all to Rs. 427, by sale of the mortgaged premises, the defendants contended that the above document created no mortgage of the house, and that the plaintiff's claim, therefore, was not cognizable by the Munsiff, in whose Court it had been instituted, but by the Small Cause Court at Meerut:—

Held, by *Stuart*, C.J., *Oldfield* and *Straight*, JJ. (*Spankie*, J., dissenting), that the document created a mortgage of the house as security for the payment of the principal sum lent, and that the plaintiff was therefore entitled to recover by sale of the mortgaged property. *Dulli* v. *Bahadur* (H. C. Rep. N. W. P. 1875, p. 55) distinguished. PHUL KUAR *v.* MURLI DHUR.....**I. L. Rep. 2 All. 527, 1879.**

29. —— *Joint Mortgage—Purchase by Mortgagee of Share in Mortgaged Property—Redemption.*] Where all the proprietors of an estate joined in mortgaging it, and the mortgagee subsequently purchased the share in such estate of one of the mortgagors, thereby breaking the joint character of the mortgage, and one of the mortgagors sued to redeem his own share and also the share of *B.*, another of the mortgagors:—

Held, that he was entitled to redeem his own share, but could not, against the mortgagee's will, redeem *B.*'s share. KURAY MAL *v.* PURAN MAL. *Spankie* and *Oldfield*, JJ...**I. L. Rep. 2 All. 565, 1879.**

30. —— *Of a Minor's Property*—De facto *Guardian—Act XL. of* 1858, § 18.] Since the passing of Act XL. of 1858, no greater powers can be exercised by a *de facto* guardian, who had not legally completed his right to manage a minor's estate, by taking out a certificate under that Act, than can be exercised by a guardian duly appointed under that Act.

Held, therefore, that a mortgage in 1868 by a Mahomedan widow as the *de facto* guardian of her minor daughter, but who had not taken out a certificate, under Act XL. of 1858, of immoveable property, belonging to herself and such daughter, purporting to have been executed in consideration of moneys advanced for the purpose of satisfying decrees which had been obtained against her late husband, the father of such minor daughter, in execution of which the property mortgaged had been attached, and for other necessary purposes for the benefit of such

Digitized by Google

MORTGAGE—*contd.*

minor daughter, was invalid, so far as it purported to create a mortgage of her daughter's share.

Held also, in a suit upon such bond brought against the widow and her daughter after the latter had attained majority, that the plaintiff could not recover against the daughter as on a simple money bond for money lent; inasmuch as her mother had no authority, under § 18 of Act XL. of 1858, to contract debts on behalf of her minor daughter; and even assuming that the signature on the bond was sufficient to bind the daughter, if it was in the power of the mother to bind her, and that the bond was a bond to which the daughter's signature had been affixed by the mother, yet the daughter being, at the time of the execution of the bond a minor, was incompetent to contract. (Contract Act IX. of 1872, § 11.)

Held also, that assuming that the money borrowed from the plaintiff had been applied by the mother for the benefit of the daughter, yet that the case did not fall within §§ 65, 68 to 70, or any of the provisions of the Contract Act, and that the plaintiff was not entitled to recover from the daughter personally. Whether the daughter was indebted to her mother in respect of any part of the money borrowed from the plaintiff, could only be ascertained on taking the accounts of the latter's management of the former's estate, and such account could not be taken in this suit at the instance of the plaintiff, whose remedy was confined to a decree against the person with whom he entered into the loan transaction, *viz.*, the mother. ABHASSI BEGUM *v.* MAHARANEE RAJROOP KOONWAR. *Ainslie* and *McDonnell*, JJ.....**I. L. Rep. 4 Cal. 33, 1878.**

31. —— *Mortgage by Administrator of a Minor's Property—Purchaser with Notice—Act XL. of* 1858, § 18.] A mortgage of the property of a minor made by the administrator appointed under Act XL. of 1858, is invalid, unless the sanction of the Court has been previously obtained under § 18 of that Act.

Where the administrator was sued, as representing the minor, by the mortgagee, and did not defend the suit and the property was sold, under a decree so obtained, to the mortgagee, who sold it to the defendant, who knew that the administrator had executed the mortgage in that capacity:—

Held, that the decree did not protect the mortgagee who purchased at the Court sale, nor her

MORTGAGE—*contd.*

vendee, the defendant, from suit by the minor for recovery of the property. DEBI DUTT SAHOO *v.* SUBODRA BIBEE. *Garth*, C.J., and *Ainslie*, J.....**I. L. Rep. 2 Cal. 283, 1876.**

See **Alienation by Guardian. 2.**

RAM CHUNDER CHUCKERBUTTY *v.* BROJONATH MOZUMDAR...**I. L. Rep. 4 Cal. 929.**

See **Sale by Guardian.**

SOONDER NARAIN *v.* BENNUD RAM. **I. L. Rep. 4 Cal. 76.**

See **Mahomedan Law—Sale by Guardian.**

See **Review. 10.**

32. —— *With Power of Sale—Deed in English Form—Lands situate in the Mofussil.*] A sale, without the intervention of a Court, of mortgaged lands situated in the Mofussil of the Bombay Presidency, under a power of sale contained in an indenture of mortgage of the ordinary English form, is valid if due notice be given to the mortgagor of the mortgagee's intention to sell, and the sale be fairly conducted.

A mortgagee selling under a power of sale cannot, either directly or through the medium of an agent or trustee, himself become the purchaser under the power. PITAMBAR NARRAYANDAS *v.* VANMALI SHAMJI. *Westropp* and *Kemball*, JJ.....**I. L. Rep. 2 Bom. 1, 1875.**

33. —— *Deed in English Form—Lands in Mofussil—Injunction.*] Where property mortgaged is situated in the Mofussil of the Bombay Presidency, but the parties to the mortgage are residents of Bombay, conducting the transaction through Bombay solicitors, and the instrument of mortgage is a regular and formal deed in English form, the parties must be held to have intended to contract with reference to the English law, and to be entitled to enforce their rights accordingly.

Where such a mortgage deed contains a power of sale by the mortgagee, after due notice to the mortgagor, and the mortgagee gives such notice of his intention to exercise the power, the mortgagor is not entitled to an injunction to restrain the exercise of the power of sale by the mortgagee merely by filing a suit for redemption. The mortgagor can only stay the sale *pendente lite* if he can show that he has made a legal tender of the amount due which has been refused, or that he has paid off the mortgage lien, or by paying the amount due into

Digitized by Google

MORTGAGE—*contd.*

Court, or by giving *primâ facie* evidence that the power of sale is being exercised in a fraudulent or improper manner, contrary to the terms of the mortgage. JAGJIVAN NANABHAI *v.* SHRIDHAR BALKRISHNA. *Melvill* and *Pinhey*, JJ.....**I. L. Rep. 2 Bom. 252, 1877.**

34. —— *Sale under—Effect of—Right of Second Mortgagee to purchase.*] "The effect of a sale under a power of sale contained in a mortgage is to destroy the equity of redemption in the land, and to constitute the mortgagee exercising the power a trustee of the surplus proceeds, after satisfying his own charge, first for the subsequent incumbrancers, and ultimately for the mortgagor. The estate, if purchased by a stranger, passes into his hands free from all the incumbrances. There seems to be no reason why the second mortgagee, who might have bought the equity of redemption from the mortgagor, should not equally with a stranger purchase the estate when sold under a power of sale created by the mortgagor." *Per Cur.* RAJAH KISHENDATT RAM *v.* RAJAH MUMTAZ ALI KHAN..... **L. Rep. 6 I. A. 145-160.**

35. —— *Conditional Decree.*] A conditional decree fixing a period of one month for payment of money found to be due on mortgage bonds entitling the mortgagor to redemption, though not claimable as of right by the mortgagor in a redemption suit, who ordinarily should be ready to pay at once with his money, is a proper and judicious order passed by an Appellate Court, where the Court of first instance determined the amount payable under the mortgage, but failed to fix any time in its decree for the payment of such amount. RAJA BARDA KANT RAI *v.* BHAGWAN DAS. *Spankie* and *Oldfield*, JJ... **I. L. Rep 1 All. 344, 1877.**

S. C. under **Interest. 2.**

36. —— *Usufructuary Mortgage—Conditional Decree.*] The plaintiffs sued to recover possession of certain lands, alleging that the defendants were in possession of the same as usufructuary mortgagees, and that the mortgage debt had been satisfied from the usufruct. The defendants denied that they were in possession as usufructuary mortgagees. The lower Courts found that the defendants were in possession as usufructuary mortgagees, but that the debt had been satisfied from the usufruct, as alleged by the plaintiffs, but nevertheless gave the plaintiffs a decree for possession conditional on the payment of the balance of the mortgage debt:—

MORTGAGE—*contd.*

Held, that as the defendants never rendered any accounts, and denied they were in possession as mortgagees, and inasmuch as no agreement had been made as to the amount at which the profits should be estimated, it was impossible for the plaintiffs to have ascertained before suit what sum, if any, was due by them, and seeing that, whether the decree was altered or not, the plaintiffs might immediately pay the balance, and demand possession, which the defendants could not legally refuse, it was unnecessary to interfere with the decree. SAHIBZADAH *v.* PARMESHAR DASS. *Turner* and *Spankie*, JJ...**I. L. Rep. 1 All. 524, 1877.**

37. —— *Right to redeem—Adverse Possession—Limitation.*] The possession of a mortgagee does not become adverse whenever he chooses to style himself, or is styled, proprietor of the mortgaged property; nor will the mere assertion of an adverse title enable a mortgagee in possession to abbreviate the period of sixty years, which the law allows to a mortgagor to prosecute his right to redeem and seek his remedy by suit. *Sheopal v. Khadim Hossein* (H. C. Rep. N. W. P. 1875, p. 220) followed.

Where, therefore, the plaintiffs in 1854 mortgaged an estate to the defendants for a period of twenty years, and before the expiration of that term the estate was sold in 1863 to the defendants and *A.* and *B.* by the plaintiffs' mother as her own, by a deed to which the plaintiffs were not parties, but which was followed by mutation of registry, notwithstanding an objection preferred by the plaintiffs, but under which neither *A.* nor *B.* ever obtained possession:—

Held, in a suit brought in 1877 by the plaintiffs to redeem the property, that though the execution of the deed of sale by the plaintiffs' mother would have justified them in suing for its avoidance, such a proceeding was not necessary or obligatory on them, nor was their suit barred because it was not brought within twelve years from the date of the execution of the deed, nor did the mere exhibition by the defendants of their names as the vendees of the property in the proprietary registers of the Revenue department create a proprietary title in them, for such a title must have a legal origin, and the plaintiffs' mother was incompetent to transfer their rights to the defendants by the deed of sale. ALI MUHAMAD *v.* LALLA BAKHSH. *Pearson* and *Oldfield*, JJ.....**I. L. Rep. 1 All. 655, 1878.**

Digitized by Google

MORTGAGE—*contd.*

38. —— *Set-off of Costs against Mortgage Money—Solicitor's Lien.*] The decree in a redemption suit directed the plaintiff (the mortgagor) to pay the mortgage money and interest to the defendant (the mortgagee), and directed the defendant to pay the plaintiff the costs of the suit :—

Held, that the plaintiff was entitled to set off or deduct the amount of the taxed costs payable to him under the decree, from the mortgage moneys payable by him to the defendant notwithstanding any claim the defendant's solicitor might have against the defendant in respect of the defendant's costs of suit BRIJNATH DASS *v.* JUGGERNATH DASS. *Pontifex*, J...**I. L. Rep. 4 Cal. 742 ; 4 Cal. Rep. 122, 1879.**

39. —— *Lien on Bond.*] The mere fact that a money decree has been obtained on a bond by which property is hypothecated does not destroy the lien on that property. It is open to a plaintiff to establish his right on the bond, as well as on the decree. HASSOON ARRA BEGUM *v.* JAWADOONNISSA SALOODA KHANDAN. *Ainslie* and *Mitter*, JJ...**I. L. Rep. 4 Cal. 29, 1878.**

40. —— *Right of Purchaser of Money-Decree obtained on Mortgage Bond*—The purchaser of a simple money-decree obtained on a mortgage bond hypothecating immoveable property, does not merely by his purchase acquire a lien on the property. GANPAT RAI *v.* SARUPI. *Pearson* and *Turner*, JJ.....**I. L. Rep. 1 All. 446, 1877.**

See **Sale in Execution of a Decree. 4. 9.**

41. —— *Payments by Mortgagee on account of Enhancement of Revenue—Suit to recover the same pending the Mortgage.*] By the terms of a deed of usufructuary mortgage, the mortgagor accepted the liability on account of any addition that might be made to the demand of the Government at the time of settlement. During the currency of the mortgage tenure, the mortgagees, averring that they had had to pay a certain sum in excess of the amount of Government revenue entered in the mortgage deed for two years, sued the mortgagor to recover such excess. The defendant contended that on a proper construction of the mortgage deed, the plaintiffs' claim could not be preferred during the currency of the mortgage, but only when accounts were settled on the redemption of the mortgage :—

MORTGAGE—*contd.*

Held, that as no settlement of accounts was contemplated by, or necessary under the provisions of the mortgage deed, and as that deed contained no express provision reserving the adjustment of any sums paid by the mortgagee in excess of the amount of Government demand at the time of the execution of the deed to the time when the mortgage tenure should be brought to an end, the suit was not premature, and could be entertained. NIKKA MAL *v.* SULEIMAN SHEIKH GARDNER. *Pearson* and *Oldfield*, JJ..... **I. L. Rep. 2 All. 193, 1879.**

MORTGAGED PROPERTY—SALE OF TO DIFFERENT PERSONS—Liability to contribute on payment of Debt by one.

See **Contribution. 2.**

MOTHOORANATH *v.* KRISTO KUMAR.....**I. L. Rep. 4 Cal. 369.**

MORTGAGEE—Assignee of—Rights of.

See **Mortgage. 11.**

SAHAI PANDEY *v.* SHAM NARAIN... **I. L. Rep. 2 All. 142.**

—— Duty of—to Give Notice of his Mortgage when selling the Mortgaged Premises under Money Decree unconnected with his Mortgage.

See **Mortgage. 3.**

TUKARAM *v.* RAMCHANDRA...**I. L. Rep. 1 Bom. 314.**

See **Sheriff's Sale. 3.**

BHUGGOBUTTY *v.* SHAMA CHURN... **I. L. Rep. 1 Cal. 337.**

—— Lien of—on Sale of Mortgagor's Interest in Execution of Money Decree obtained by.

See **Mortgage. 5.**

TUKARAM *v.* RAMCHANDRA.....**I. L. Rep. 1 Bom. 314.**

See **Sheriff's Sale. 3.**

BHUGGOBUTTY *v.* SHAMA CHURN... **I. L. Rep. 1 Cal. 337.**

—— Not in Possession — not Estopped by Decree establishing Right of Way in Suit against Mortgagor to which he was not a Party and of which he had no Notice.

See **Estoppel. 4.**

BONOMALEE *v.* KOYLASH CHUNDER. **I. L. Rep. 4 Cal. 692.**

Digitized by Google

MORTGAGEE—*contd.*

—— Purchase by—of Portion of Tenure previous to Decree for Ejectment in Rent Suit—Right to question Decree.

See **Rent Suit. 1.**

MADHOO PROSHAUD *v.* PURSHAN... **I. L. Rep. 4 Cal. 520.**

—— Purchase by—of Mortgaged Property or Share therein of one of several Joint Mortgagors.

See **Mortgage. 27. 29.**

—— Sale by—under Power of Sale without Intervention of Court.

See **Mortgage. 32. 33.**

PITAMBER *v.* VANMALI .....**I. L. Rep. 2 Bom. 1.**

JAGJIVAN *v.* SHRIDHAR.....**Ibid. 252.**

MORTGAGEE OF PATNI TALUK—Right of—to prevent Sale of Mortgaged Property for Arrears of Zemindari Rent by Payment thereof.

See **Co-Sharers of Patni Taluk.**

MOHESH CHUNDER *v.* RAM PROSUNNO.....**I. L. Rep. 4 Cal. 539.**

MORTGAGEE IN POSSESSION—Adverse Possession by.

See **Mortgage. 37.**

ALI MUHAMMAD *v.* LALTA BUKHSH. **I. L. Rep. 1 All. 655.**

—— Of Indigo Factory—Liability of—for Debts of Factory.

See **Indigo Factories. 1.**

MONOHUR DOSS *v.* MCNAGHTEN... **I. L. Rep. 3 Cal. 231.**

—— Liability of—to pay Asssesment.

See **Kabulayatdar Khot.**

KHRISHNAJI *v.* RAMCHANDRA...**I. L. Rep. 1 Bom. 70.**

—— Ouster of—in Execution of Decree against Mortgagor.

See **Civil Procedure Code, Act X. of 1877, § 332.**

SHAFI-UD-DIN *v.* LOCHAN SINGH... **I. L. Rep. 2 All. 94.**

MORTGAGEE OF UNDER-TENURE—Right of—to Notice, on sale under Decree for Arrears of Rent.

See **Sale of Under-Tenure. 3.**

LAIDLEY *v.* GUNNESS CHUNDER SAHOO...**I. L. Rep. 4 Cal. 438.**

MORTGAGEE'S COSTS.

See **Costs. 1.**

CARVALHO *v.* NURBIBI.....**I. L. Rep. 3 Bom. 202.**

MORTGAGOR—Grant by—Subsequent to Mortgage.

See **Mortgage. 6.**

MUTHORA NATH *v.* CHUNDERMONEY...**I. L. Rep. 4 Cal. 817.**

MORTGAGOR AND MORTGAGEE—Decree against Mortgagor in Possession in Suit to which Mortgagee not a Party and of which he has no Notice—Right of Way.

See **Estoppel. 4.**

BONOMALEE *v.* KOYLASH CHUNDER...**I. L. Rep. 4 Cal. 692.**

MORTGAGOR'S TITLE, ACKNOWLEDGMENT.

See the Cases under **Acknowledgment of Mortgagor's Title.**

MOTHER—Estate of—succeeding as Heir to her Son.

See **Hindu Law — Inheritance — Mother.**

SADASHIV *v.* SITABAI.....**I. L. Rep. 3 Bom. 353.**

—— Right of—to Share, on Partition between Sons after Father's Death.

See **Parties to Suit. 3.**

TORIT BHOOSUN *v.* TARAPROSONNO ..**I. L. Rep. 4 Cal. 756.**

—— Share of—on Partition among Sons—Right of—as Representative of Deceased Son.

See **Hindu Law—Partition. 4.**

JUGMOHAN *v.* SARODAMOYEE...**I. L. Rep. 3 Cal. 149.**

—— Unchastity of—excludes from Inheritance to Son's Property.

See **Hindu Law—Disqualification to Inherit. 5.**

RAMNATH *v.* DURGA SUNDARI...**I. L. Rep. 4 Cal. 550.**

Digitized by Google

MOTHER'S SISTER'S SON—Adoption of —Valid among Sudras.

See **Hindu Law—Adoption. 4.**

CHINNA NAGAYYA *v.* PEDDA NAGAYYA...**I. L. Rep. 1 Mad. 62.**

MOTION TO DISCHARGE OR VARY COMMISSIONER'S REPORT.

See **Practice—Civil. 7.**

SUMAR AHMAD *v.* HAJI ISMAIL...**I. L. Rep. 1 Bom. 159.**

MOTIVES OF WIDOW IN ADOPTING WITHOUT WRITTEN AUTHORITY OF HUSBAND.

See **Hindu Law—Adoption. 12.**

RAJAH VELLANKI *v.* VENKATA RAMA...**L. Rep. 4 I. A. 1; I. L. Rep. 1 Mad. 174.**

MOVEABLE PROPERTY—Succession to —Marriage in India between Persons with English Domicile.

See **Indian Succession Act X. of 1865, § 4.**

MILLER *v.* ADMINISTRATOR GENERAL OF BENGAL...**I. L. Rep. 1 Cal. 412.**

MULGAR—Right of—on Enhancement of his Assessment to recover from his *Mulgeni* Tenant.

See **Mistake. 1.**

BABSHETI *v.* VENKATARAMANA.... **I. L. Rep. 3 Bom. 154.**

MULTIFARIOUSNESS — Partition Suit seeking also to eject Cultivating Ryots.

See **Partition Suit. 1.**

SAMINDAPILLAI *v.* SUBBA REDDIAR. **I. L. Rep. 1 Mad. 333.**

MULTIPLICITY OF SUITS — *Suit for Maintenance—Practice.*] It is not desirable that there should be several suits in respect of the maintenance of one widow. The system of seeking or granting relief piecemeal, subjects both plaintiffs and defendants to much unnecessary expense and trouble, and such a course ought to be discountenanced, so far as may legitimately be done, by the Civil Courts. *Per Westropp*, C. J., in LAKSHMAN *v.* SATYABHAMABAI.....**I. L. Rep. 2 Bom. 494-497, 1877.**

MULTIPLICITY OF SUITS—*contd.*

2. —— *Maintenance—Practice.*] "It may be well to draw attention to the remark in the recent case of *Lakshman v. Satyabhamabai* (I. L. Rep. 2 Bom. 494-497) censuring the unnecessary multiplication of suits for the maintenance of one and the same widow. If the first suit were properly framed, and a continuing decree for the payment of her maintenance at a fixed monthly annual, or quarterly rate were made, any further decree would be unnecessary, unless either party brought it to the notice of the Court that circumstances rendered it equitable that the rate should be enhanced or reduced. Many circumstances might be suggested which would do so, *e.g.*, a marked increase or diminution in the value of the estate, or of its annual yield, the destruction of a portion of the estate, or an addition to it, say by the shifting of the course of a river, or other cause.

"Suits brought on continuing decrees in the ordinary Civil Courts for present and prospective maintenance are not only unnecessary, but unsustainable." *Per Westropp*, C.J., in SIDLINGAPA *v.* SIDAVA. **I. L. Rep. 2 Bom. 624-630, 1878.**

MUNICIPAL COMMISSIONERS—Appeal from Assessment by.

See **Bengal Act III. of 1864, § 33.**

MANESSUR DASS *v.* COLLECTOR, &c., OF CHAPRA.....**I. L. Rep. 1 Cal. 409.**

—— Power of—to Close or Divert Public Highways.

See **Bengal Act III. of 1864.**

EMPRESS *v.* BROJONATH DEY...**I. L. Rep. 2 Cal. 425.**

—— Public Servants.

See **Jurisdiction. 18.**

GANGADHAR *v.* COLLECTOR OF AHMEDNAGAR...**I. L. Rep. 1 Bom. 628.**

See infra.

—— *Public Servant—Act IV. of* 1877, § 39—*Penal Code*, § 21.] Even assuming that the Municipal Corporation of Calcutta is a public servant within the meaning of § 21 of the Penal Code, yet it is not a public servant within the meaning of § 39 of Act IV. of 1877, and may, therefore, be prosecuted under the Penal Code without the preliminary sanction of the Government.

Digitized by Google

MUNICIPAL COMMISSIONERS—*contd.*

Per Ainslie, J.—The right to prosecute any person, or body of persons, by whom one may have been injured, is a common right which can only be limited by special legislation; and in considering whether the right has been taken away, the Court must see that it is taken away by express words, or by necessary implication.

Per White, J.—*Quære*, whether the Corporation, as distinct from its individual members, was a public servant at all, as those words are defined in § 21 of the Penal Code. EMPRESS *v.* MUNICIPAL CORPORATION OF CALCUTTA. *Ainslie* and *White*, JJ.....**I. L. Rep. 3 Cal. 758; 2 Cal. Rep. 520, 1878.**

MUNICIPAL COMMITTEE—Power of.

See **Right to Sue. 4.**

FAZAL HAQ *v.* MAHA CHAND... **I. L. Rep. 1 All. 557.**

MUNICIPAL TAX—Legally imposed—Suit to contest Incidence—Jurisdiction.

See **Jurisdiction. 1.**

KAMAYYA *v.* LEMAN...**I. L. Rep. 2 Mad. 37.**

MUNICIPALITY—Suit against—Jurisdiction in District Judge alone.

See **Suit against a Municipality.**

THE MUNICIPALITY OF AHMEDABAD *v.* MAHAMAD JAMAL... **I. L. Rep. 3 Bom. 146.**

—— Suit against—Substitution of President for Secretary as Defendant—Limitation.

See **Act XV. of 1873, § 43.**

MANNI KASAUNDHAN *v.* CROOKE... **I. L. Rep. 2 All. 296.**

MUNSIFF—Village.

See **Village Munsiff. 1.**
Evidence. 23.
Criminal Procedure Code, Act X. of 1872, § 122. 2.

EMPRESS *v.* RAMANJIYA.....**I. L. Rep. 2 Mad. 5.**

MUNSIFF—JURISDICTION OF—Suit to redeem Usufructuary Mortgage—Denial of Mortgage—Value of Land.

See **Jurisdiction. 15.**

KALIAN DAS *v.* NAWAL SINGH... **I. L. Rep. 1 All. 620.**

MUNSIFF—JURISDICTION OF—*contd.*

—— Suit to enforce Mortgage Bond by Sale of Mortgaged Property.

See **Mortgage. 28.**

PHUL KUAR *v.* MURLI DHUR... **I. L. Rep. 1 All. 527.**

MURDER—*Sentence.*] *L.*, *C.*, *K.*, and *D.* conspired to kill *S.* In pursuance of this conspiracy, *L.* first, and then *C.*, struck *S.* on the head with a *lathi*, and *S.* fell to the ground. While *S.* was lying on the ground, *K.* and *D.* struck him on the head with their *lathis*.—*Held*, (*Stuart*, C.J., *diss.*) that inasmuch as *K.* and *D.* did not begin the attack on *S.*, and it was doubtful whether *S.* was dead when they struck him, transportation for life was an adequate punishment for their offence. EMPRESS *v.* CHATTAR SINGH. *Stuart*, C.J., *Pearson* and *Oldfield*, JJ... **I. L. Rep. 2 All. 33, 1878.**

2. —— *Culpable Homicide—Penal Code*, §§ 299, 300.] Where an act which causes death is done with an intention to kill, the offence is always murder.

Where the act causing death is done without any intention to cause death or bodily injury, whether the offence is culpable homicide or murder depends on the degree of risk to human life. If death is a likely result, it is culpable homicide; if it is the most probable result, it is murder. When the act causing death is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, the offence is murder if the offender knows that the particular person injured is likely, from peculiarity of constitution, or immature age, or other special circumstance, to be killed by an injury which would not ordinarily cause death. When the act causing death is done with the intention of causing such bodily injury as is *likely* to cause death, it is culpable homicide; if done with the intention of causing such bodily injury as is sufficient in the ordinary course of nature to cause death, it is murder. Where the prisoner knocked his wife down, put one knee on her chest, and struck her two or three violent blows on the face with his clenched fist, producing extravasation of blood on the brain, and she died in consequence, either on the spot or very shortly afterwards :—

Held, there being no intention to cause death, and the bodily injury not being sufficient in the ordinary course of nature to cause death, the

Digitized by Google

MURDER—*contd.*

offence was culpable homicide, and not murder. REG. *v.* GOVINDA. *Melvill*, J., on reference by *Kemball* and *N. Haridas*, JJ.....**I. L. Rep. 1 Bom. 342, 1876.**

See REG. *v.* BALAPA...**I. L. Rep. 1 Bom. 639.**

MUSHA.

See **Mahomedan Law—Gift. 1. 2.**

JIWAN BAKSH *v.* IMTIAZ BEGAM... **I. L. Rep. 2 All. 93.**

AMEEROONISSA *v.* ABEDOONISSA... **L. Rep. 2 I. A. 87.**

MUTINY ACT (1877).

See **Stat. 40 Viet., C. 7.**

MUTUAL DEALINGS—Principal and Agent—Continuous Account—Limitation.

See **Limitation. 34.**

WATSON *v.* AGA MEHEDEE SHEERAZEE.....**L. Rep. 1 I. A. 346.**

MUTUWALLI — Joint—Survivorship —Appointment of Successor—Right to sue.

See **Mahomedan Law—Wakf. 1.**

PHATE SAHEB *v.* DAMODAR.. **I. L. Rep. 3 Bom. 84.**

NAGAR VISSA VANIA CASTE.

See **Hindu Law — Marriage in Asura Form.**

JAIKISONDAS *v.* HARKISONDAS ..**I. L. Rep. 2 Bom. 9.**

NARWADARI VILLAGE—Attachment of unrecognized Portion of *Bhag* in.

See **Bombay Act V. of 1862. 1. 2.**

RANCHORDAS *v.* RANCHORDAS...**I. L. Rep. 1 Bom. 581.**

ARDASIR *v.* MUSE...**I. L. Rep. 1 Bom. 601.**

—— *Bombay Act V. of 1862—Partition.*] There is nothing in Bombay Act V. of 1862 which debars a Civil Court from making a decree for partition of *Narwadari* land among the *Narwadars*. VERIBHAI *v.* RAGHUBHAI. *Melvill* and *Kemball*, JJ.....**I. L. Rep. 1 Bom. 225, 1876.**

NATIVE STATE—Act XI. of 1872, §§ 3 and 9—Offence committed in—Cyprus.

See **Offence committed at Cyprus.**

EMPRESS *v.* SARMUKH SINGH...**I. L. Rep. 2 All. 218.**

NATRA MARRIAGE.

See **Hindu Law — Inheritance — Illegitimate Son. 4. 5.**

RAHI *v.* GOVIND...**I. L. Rep. 1 Bom. 97.**

NARAYAN *v.* LAVING...**I. L. Rep. 2 Bom. 140.**

See **Penal Code, § 494.**

REG. *v.* SAMBHU...**I. L. Rep. 1 Bom. 347.**

NATURE OF PRIOR MORTGAGEE'S SECURITY.

See **Mortgage. 1.**

SHRINGAPURE *v.* PETHE...**I. L. Rep. 2 Bom. 662.**

NATURAL GUARDIAN—Alienation by.

See the Cases collected under **Alienation by Guardian; Mortgage, 30, 31; Sale by Guardian; Mahomedan Law—Sale by Guardian,** and **Review. 10.**

—— Loss of Caste of—does not deprive—of Right of Custody of Infant.

See **Loss of Caste. 1.**

KANAHI *v.* BIDDYA...**I. L. Rep. 1 All. 549.**

—— Prostitution of.

See **Mahomedan Law—Guardian.**

ABASI *v.* DUNNE.....**I. L. Rep. 1 All. 598.**

NATURE OF SON'S INTEREST IN IMMOVEABLE ANCESTRAL PROPERTY.

See **Hindu Law—Undivided Family. 5.**

BALDEO DAS *v.* SHAM LALL...**I. L. Rep. 1 All. 77.**

See **Hindu Law—Liability of Ancestral Estate in the hands of the Heirs for Debts of the Ancestor.**

NARRAYAN *v.* NARSO...**I. L. Rep. 1 Bom. 262.**

NEGLIGENCE—Burden of proof of—Carrier —Loss by Fire.

See **Railway Company. 3.**

ISHWARDAS *v.* THE G. I. P. RAILWAY COMPANY...**I. L. Rep. 3 Bom. 120.**

Digitized by Google

NEGLIGENCE—*contd.*

—— Contract Act IX. of 1872, § 19.

See **Cancellation of Signature.**

THE ORIENTAL BANK CORPORATION *v.* JOHN FLEMING.....**I. L. Rep. 3 Bom. 242.**

1. —— *Duty of Persons sending Goods of a Dangerous Character for Carriage by Railway—Notice—Act XVIII. of* 1854, § 15—*Act XIII. of* 1855 — *Compensation.*] The defendant, a chemist, carrying on the business of a chemist at Allahabad, instructed his assistant, who was also a qualified chemist, to prepare and despatch to a customer at Gwalior some detonating powder. The defendant had previously supplied customers with detonating powder, the component parts of which, however, were not compounded in his shop, but sent to customers in separate bottles. On this occasion, the defendant's assistant, with the defendant's knowledge, compounded the ingredients of the detonating powder, and placed them in one bottle, which was packed and sent to the Railway station for despach to Gwalior. The box containing the bottle was not marked "dangerous," nor was any notice given, nor did anything exist which could suggest to the servants of the Railway Company, or the public, that the box contained any explosive substance, or required care in manipulation. While at the Railway station, the box exploded, and the plaintiff's husband, who was a servant in the employ of the Railway Company, was so injured by the explosion that he died. The cause of the explosion was unexplained, but the scientific witnesses who were examined deposed that the spontaneous explosion of such ingredients as those of which this detonating powder was composed, was a thing unknown in chemistry. In a suit brought by the widow of the deceased, under Act XIII. of 1855, to recover compensation for the damage sustained by her by reason of the death of her husband:—

Held, by *Stuart*, C.J., that with reference to the defendant's liability, it was immaterial how the explosion took place; or that the defendant's professional knowledge and experience were not such as to have led him to anticipate such an accident, especially by spontaneous explosion. As a skilled and professional chemist, he was bound to protect the public, whether Railway clerks or others, to the utmost of his power, and with the use of every precaution against any possible consequences of his dealing with, and sending by railway or by other means of carriage chemical substances which he and his assistant knew to be explosive, and therefore dangerous; and even if they did not know as much, they must be assumed and taken to have known—at least, the defendant, as a professed and skilled chemist must be taken to have known—the real and dangerous character of the contents of the box, and he could not be excused for not having notified that fact to the Railway Company and the public by a distinct inscription on the box, of the word "dangerous," or some other equally suitable term, or in some other way, or by some other means. The defendant, therefore, was liable to compensate the plaintiff for the loss of her husband, and considering that there were no children of the marriage, the age of the deceased and the nature of his employment as goods clerk, the sum of Rs. 3,000 was a fair sum to award the plaintiff.

Held, by *Turner*, *Spankie*, and *Oldfield*, JJ., that the cause of the explosion was immaterial. It was incumbent on the defendant, both on the general principles of law, and by the special provisions of the Railway Act XVIII. of 1854, to give notice of the contents of the box to the Company's servants. A person may be liable for the consequences of an accident resulting from his own negligence in combination with other causes which he did not contemplate. Even if the explosion was spontaneous, it could not have occurred had the defendant followed the practice he had hitherto pursued, of sending the ingredients of the powder in different bottles. With a knowledge of the highly explosive character of the preparation he omitted the precaution which his own practice proved he considered reasonable to preclude the risk of accident, and was therefore liable.

Per Pearson, J.—On the assumption that the explosion was spontaneous, the defendant was not liable; the death of the plaintiff's husband not being the result of the defendant's illegal omission to comply with the requirements of § 15 of Act XVIII. of 1854, inasmuch as the explosion, on that assumption, was not a natural and probable consequence of such omission. LYELL *v.* GANGA DAI...**I. L. Rep. 1 All. 60, 1875, F.B.**

NEGOTIABLE INSTRUMENT—Promissory Note payable only to Payee is not.

See **Assignment of Chose in Action.**

KANHAIYA LAL *v.* DOMINGO...**I. L. Rep. 1 All. 732.**

Digitized by Google

NEPHEW—Right of—in Undivided Family to Inherit Estate of Deceased Uncle.

See **Hindu Law — Inheritance—Nephew.**

BHIMUL DOSS *v.* CHOONEE LALL...**I. L. Rep. 2 Cal. 379.**

See **Hindu Law — Inheritance—Brothers. 3.**

DEBI PARSHAD *v.* THAKUR DIAL... **I. L. Rep. 1 All. 105.**

NOMINAL DAMAGES—Defamation.

See **Damages. 2.**

FUTTEH PAROEE *v.* MOHENDER NATH.....**I. L. Rep. 1 Cal. 385.**

NON-APPEARANCE OF DEFENDANT'S PLEADER AT THE HEARING.

See **Judgment Ex-parte. 1.**

DAYAL MISTREE *v.* KUPPOOR CHUND...**I. L. Rep. 4 Cal. 318.**

NON-JOINDER.

See **Co-Sharers of Land. 4.**

BYDONATH ROY *v.* GRISH CHUNDER ROY.....**I. L. Rep. 3 Cal. 26.**

NON-JOINDER OF LOCAL GOVERNMENT IN SUIT AGAINST MUNICIPAL COMMITTEE.

See **Act XV. of 1873, §§ 28 and 43.**

MUNICIPAL COMMITTEE OF MORADABAD *v.* CHATRI SINGH.....**I. L. Rep. 1 All. 269.**

NON-PAYMENT OF RENT—Extinguishment of Right of Occupancy in respect of Submerged Lands on their Re-formation, by.

See **Extinguishment of Right of Occupancy.**

HEMNATH DUTT *v.* ASHGUR SINDAR...**I. L. Rep. 4 Cal. 894.**

—— When Relation of Landlord and Tenant once shown, no Proof of Cessation of that Relationship.

See **Landlord and Tenant. 5. 9.**

RUNGO LALL *v.* ABDOOL GUFFOOR. **I. L. Rep. 4 Cal. 314.**

PREM SUKH DAS *v.* BHUPIA...**I. L. Rep. 2 All. 517.**

NON-PAYMENT OF RENT BY OCCUPANCY RYOT FOR MORE THAN 12 YEARS—Admission of Liability to pay—no Title to Land.

See **Limitation. 21.**

PORESH NARAIN *v.* KASSI CHUNDER...**I. L. Rep. 4 Cal. 661.**

NON-RECOGNITION BY GOVERNMENT OF ADOPTION.

See **Bombay Act II. of 1863, § 6, Cl. 2.**

VASUDEV *v.* RAMKRISHNA...**I. L. Rep. 2 Bom. 529.**

NOTES OF EVIDENCE — Taken by Magistrate—Affidavits to Supplement, on Applicaton to transfer Case to High Court.

See **High Court Criminal Procedure Act X. of 1875, § 147. 3.**

REG. *v* HADJI JEEBUN BUX...**I. L. Rep. 1 Cal. 354.**

NOTES OF JUDGEMENT IN DEPUTY REGISTRAR'S BOOK — Cannot be used to aid in Construction of Decree.

See **Construction of Decree.**

SUMAR AHMED *v.* HAJI ISMAIL...**I. L. Rep. 1 Bom. 158.**

NOTICE—Burden of Proof of.

See **Onus Probandi. 1.**

LALUBHAI BAI *v.* AMRIT...**I. L. Rep. 2 Bom. 299.**

—— Of Charitable Trust.

See **Hindu Law—Will. 10.**

MANIKLALL ATMARAM *v.* MANIKSHA DINSHA COACHMAN...**I. L. Rep. 1 Bom. 269.**

See the Cases under **Trust.**

—— Constructive Notice—Notice to Solicitor.

See **Limitation. 38a.**

GREENDER CHUNDER *v.* MACKINTOSH. **I. L. Rep. 4 Cal. 897.**

—— Right to—of Mortgagee of Under-Tenure, on Sale under Decree for Arrears of Rent.

See **Sale of Under-Tenure. 3.**

LAIDLEY *v.* GUNNESS CHUNDER SAHOO...**I. L. Rep. 4 Cal. 438.**

Digitized by Google

NON-PAYMENT OF RENT—*contd.*

—— Sale for Arrears of Revenue—Estate under Attachment.

See **Act XL. of 1859, § 5.**

BANWAREE LALL *v.* MOHABEER PROSHAD.....**L. Rep. 1 I. A. 89.**

NOTICE OF ACTION.

See **Act XV. of 1873, §§ 28 and 43.**

MUNICIPAL COMMITTEE OF MORADABAD *v.* CHATRI SINGH...**I. L. Rep. 1 All. 269.**

NOTICE OF APPEAL—Act X. 1866, § 141.

See **Company—Winding up. 2.**

LALLAH BARROOMUL *v.* THE OFFICIAL LIQUIDATOR...**I. L. Rep. 4 Cal. 704.**

NOTICE OF DISHONOUR.

See **Hundi. 1.**

GOVIND RAM MARWARY *v.* MATHOORA SABOOYA.....**I. L. Rep. 3 Cal. 339.**

NOTICE OF ENHANCEMENT OF RENT—By One of Several Joint Landlords.

See **Enhancement of Rent. 9.**

BALAJI *v.* GOPAL...**I. L. Rep. 3 Bom. 23.**

——Service of—on One Member of Joint Hindu Family, owning Tenure, sufficient.

See **Bengal Act VIII. of 1869, § 104. 1.**

NOBADEEP CHUNDER *v.* SHONARAN DASS.....**I. L. Rep. 4 Cal. 592.**

——Stipulation for Increase of Rent of Land let, if on Measurement it proved in excess of Quantity stated in Lease—necessary.

See **Enhancement of Rent. 8.**

EKRAM MUNDUL *v.* HOLODHUR PAL.....**I. L. Rep. 3. Cal. 271.**

——*Tullubi Bromuttur* Tenure.

See **Enhancement of Rent. 6.**

NIL MONEY *v.* CHUNDERKANT...**I. L. Rep. 2 Cal. 125.**

NOTICE OF ENHANCEMENT OF RENT—*contd.*

——Unnecessary when Express Stipulation in Potta for Increased Rental as Lands let brought under Cultivation.

See **Beng. Act VIII. of 1869, § 14. 2.**

NISTARNI DASI *v.* BONOMALI CHATTERJI.....**I. L. Rep. 4 Cal. 941.**

NOTICE OF FORECLOSURE—Right of Second Mortgagee to.

See **Beng. Reg. XVII. of 1806, § 8.**

DIRGAJ SINGH *v.* DEBI SINGH...**I. L. Rep. 1 All. 499.**

NOTICE OF FORECLOSURE, SERVICE OF—Reg. XVII. of 1806, § 8.

See **Mortgage. 13. 14.**

NORENDAR *v.* DWARKA LALL...**L. Rep. 5 I. A. 18; I. L. Rep. 3 Cal. 397.**

BANK OF HINDUSTAN, &c. *v.* SHOROSHIBALLA DEBEE.....**I. L. Rep. 2 Cal. 311.**

NOTICE OF MORTGAGE—On Sale in Execution of Money Decree, unconnected with Mortgage, obtained by Mortgagee.

See **Mortgage. 5.**

TUKARAM *v.* RAMCHANDRA...**I. L. Rep. 1 Bom. 314.**

NOTICE OF PROCEEDINGS IN EXECUTION OF DECREE ON MORTGAGE—Right of Prior Purchaser of Mortgaged Property under Sale in Execution of Decree obtained by himself to.

See **Lis pendens. 1.**

LALLA KALI PROSAD *v.* BULI SINGH.....**I. L. Rep. 4 Cal. 789.**

NOTICE, PURCHASER WITH—of Claim of Married Woman to Property sold as being her Separate Estate.

See **Married Woman's Separate Property. 3.**

BERESFORD *v.* HURST...**I. L. Rep. 1 All. 772.**

—— From Purchaser without.

See **Equitable Mortgage. 1.**

DAYAL JAIRAZ *v.* JIVRAJ RATANSI. **I. L. Rep. 1 Bom. 237.**

And *see* RAJU BALU *v.* KRISHNARAO.....**I. L. Rep. 2 Bom. 273-292.**

Digitized by Google

NOTICE TO PROSECUTOR—Of Transfer of Case to High Court.

See **HighCourt Criminal Procedure, Act X. of 1875, § 147. 4.**

REG. *v.* UPENDRONATH DOSS...**I. L. Rep. 1 Cal. 356.**

NOTICE TO QUIT—Suit to eject is not equivalent to.

See **Landlord and Tenant. 1.**

RAJENDRONATH *v.* BASSIDER RUHMAN...**I. L. Rep. 2 Cal. 146.**

See **Ejectment. 1.**

RAM ROTTON *v.* NETRO KALLY...**I. L. Rep. 4 Cal. 339.**

—— Absence of — Objection as to—not raised in Memorandum of Special Appeal, not allowed at Hearing.

See **Practice—Civil. 10.**

BABAJEE *v.* NARAYAN ..**I. L. Rep. 3 Bom. 340.**

—— Tenant from Year to Year — Reasonable Notice—Act X. of 1872, § 530.

See **Ejectment. 1.**

RAM ROTTON *v.* NETRO KALLY... **I. L. Rep. 4 Cal. 339.**

See **Landlord and Tenant. 1.**

RAJENDRONATH *v.* BASSIDER ..**I. L. Rep. 2 Cal. 146.**

NOTICE OF SALE—Proof of Service of.

See **Bengal Reg. VIII. of 1819, § 8, Cl. 2. 2.**

BHUGWAN CHUNDER *v.* SUDDER ALLY...**I. L. Rep. 4 Cal 4.1.**

NOTICE OF SALE, SERVICE OF.

See **Bengal Reg. VIII. of 1819, § 8, Cl. 2. 1.**

RAM SABUK BOSE *v.* MONMOHINI DOSSEE...**L. Rep. 3 I. A. 71.**

NOTICE OF SALE FOR ARREARS OF RENT—Publication and Service of—Defective — "Sufficient Plea for setting aside Sale."

See **Bengal Reg. VIII. of 1819, § 8. 3.**

GOWREE LALL SINGH *v.* JOODHISTEER HAJRAH...**I. L. Rep. 1 Cal 359.**

NOTICE OF SALE OF PUTNI TENURE FOR ARREARS OF RENT — Publication of.

See **Bengal Reg. VIII. of 1819, § 8, Cl. 2. 3.**

MATUNGEE CHURN MITTER *v.* MOORARY MOHUN GHOSE... **I. L. Rep. 1 Cal. 175.**

NOVATION.

See **Champerty. 1.**

CHEDAMBARA CHETTY *v.* RENGA KRISHNA...**L. Rep. 1 I. A. 241.**

See **Limitation. 56.**

NATHA *v.* JANARDHAN...**I. L. Rep. 1 Bom. 503.**

NUISANCE—Abatement of.

See **Land held by Joint Owners.**

EMPRESS *v.* RAJCOOMAR SINGH...**I. L. Rep. 3 Cal. 573.**

——Abatement of Public—Suit for.

See **Right to Sue. 1. 2. 3. 4. 5.**

RAJ COOMAR SINGH *v.* SAHEBZADA ROY...**I. L. Rep. 3 Cal. 20.**

SATHU KADIR *v.* IBRAHIM AGA...**I. L. Rep. 2 Bom. 457.**

GEHANJI *v.* GANPATI...**I. L. Rep. 2 Bom. 467.**

KARIM BAKSH *v.* BUDHA... **I. L. Rep. 1 All. 249.**

——Injunction to discontinue—Breach—Contempt —Jurisdiction of Court issuing Injunction.

See **Criminal Procedure Code, Act X. of 1872, § 473. 1.**

REG. *v.* PARSAPA MAHADEVAPA ... **I. L. Rep. 1 Bom. 339.**

NUNCUPATIVE WILL.

See **Hindu Law—Will. 12.**

BHAGWAN *v.* KALA..... **I. L. Rep. 1 Bom. 641.**

OATH—Illegally administered——Validity of Award founded on Evidence taken on.

See **Oaths Act X. of 1873, §§ 8, 10. 13.**

WALI-UL-LA *v.* GHULAM ALI ..... **I. L. Rep. 1 All. 535.**

Digitized by Google

OATH —*contd.*

—— Power of Arbitrators to administer—other than in Prescribed Form.

See **Oaths Act X. of 1873, §§ 8, 10, 13.**

WALI-UL-LA *v.* GHULAM ALI.....**I. L. Rep. 1 All. 535.**

OATHS ACT X. OF 1873—§§ 8, 10, 13. *Power of Arbitrators to administer Oath other than in Prescribed Form—Validity of Award based on Evidence taken on Oath illegally administered — Special Appeal.*] The matters in dispute in a suit were, by consent of the parties, referred to arbitration. During the investigation of those matters by the arbitrators, the plaintiff offered to be bound by the defendant's oath administered on the Koran. The defendant agreed to take such oath, and the arbitrators administered it to him, and made an award in accordance with his evidence taken by them on such oath. On special appeal to the High Court, the plaintiff for the first time contended at the hearing, the contention not being raised in the memorandum of special appeal, that the arbitrators not constituting a Court were not legally competent to administer the oath to the defendant, under § 10 of Act X. of 1873, which only empowers a Court to administer such oath as is mentioned in § 8 of that Act, and that the defendant's evidence taken on such oath could not form a valid basis of the award :—

Held by *Pearson*, J., that the objection was valid, and, being one which vitally affected the arbitrators' procedure, could not be ignored, although not preferred in the lower Courts, and although it was not to be found in the memorandum of special appeal.

Spankie, J., doubted whether the objection should be entertained in special appeal, but *held* that, assuming that the plea could be taken on special appeal, it should be rejected ; the plaintiff offered to abide by the defendant's oath on the Koran, and his offer was accepted by the defendant; the plaintiff, therefore, was bound by his agreement, made with the free consent of both parties, competent to make it, and for a lawful object ; and was bound by the evidence of the defendant, given under an obligation imposed on him, and fulfilled in the manner required by the plaintiff himself.

Held also, that there was nothing in Act X. of 1873, which would make it unlawful for the arbitrators to administer an oath on the Koran to a party willing to be sworn upon it ; and the arbitrators being authorized to affirm witnesses in the manner in force in the Courts, the substitution by them of an oath on the Koran by request of one of the parties, assented to by the other party, did not, under § 13 of the Act, invalidate the evidence, nor render void the award founded thereon. WALI-UL-LA *v.* GHULAM ALI.....**I. L. Rep. 1 All. 535, 1877.**

OBJECTION TO DECREE AS DECLARATORY, PRECLUDED, SPECIAL LEAVE TO APPEAL HAVING BEEN GRANTED ON OTHER GROUNDS.

See **Practice—Privy Council. 9.**

SHEO SINGH RAI *v.* MUSSUMUT DAKHO ... **L. Rep. 5 I. A. 87.**

OBJECTION NOT RAISED IN COURT BELOW.

See **Appeal—Civil. 8.**

PORAN *v.* PARBUTTY...**I. L. Rep. 3 Cal. 612.**

—— As to Guardian *de facto* not being Legal Guardian, not admitted in Second Appeal.

See **Mahomedan Law — Sale by Guardian.**

HASAN ALI *v.* MEHDI HUSSAIN...**I. L. Rep. 1 All. 533.**

—— As to Illegality of Oath administered by Arbitrators.

See **Oaths Act X. of 1873, §§ 8, 10, 13.**

WALI-UL-LA *v.* GHULAM ALI...**I. L. Rep. 1 All. 535.**

—— As to Invalidity of Plaintiff's Adoption, not allowed in Appeal.

See **Practice—Civil. 9.**

JANOKEE *v.* GOPAL.....**I. L. Rep. 2 Cal. 365-371.**

—— As to Insolvency of Plaintiff Admitted in Second Appeal.

See **Appeal—Civil. 24.**

SAOODIN *v.* SPIERS...**I. L. Rep. 3 Bom. 437.**

—— As to Jurisdiction.

See **Appeal—Civil. 3.**

BAI MAKHOR *v.* BULAKHI...**I. L. Rep. 1 Bom. 538.**

See BEHARRY *v.* JAGGO..... **I. L. Rep. 4 Cal. 1-6.**

Digitized by Google

OBJECTION NOT RAISED IN COURT BELOW—*contd.*

—— As to Limitation.

See **Limitation. 3.**

MORU *v.* GOPAL ..**I. L. Rep. 2 Bom. 120.**

—— As to Registration.

See **Registration. 6. 14.**

SAFDAR ALI *v.* LACHMAN.....**I. L. Rep. 2 All. 554.**

BASAWA *v.* KALAPA...**I. L. Rep. 2 Bom. 489.**

—— To Report of Commissioners under § 181, Act VIII. of 1859.

See **Practice—Civil. 2.**

SETHS GUJMALL & CO. *v.* MUSST. CHAHEE KOWAR...**L. Rep. 2 I. A. 34.**

—— As to Want of Notice to quit, not admitted in Special Appeal.

See **Practice—Civil. 10.**

BABAJI *v.* NARAYAN...**I. L. Rep. 3 Bom. 340.**

—— As to Want of Possession of Plaintiff's Vendor disallowed on Special Appeal.

See **Appeal—Civil. 29.**

MAHADAJI *v.* VYANKAJI .....**I. L. Rep. 1 Bom. 197.**

—— As to Want of Stamp on Document tendered in Evidence.

See **Registration. 6.**

OBJECTION TAKEN BY RESPONDENT.

See **Pauper Respondent.**

BABAJI *v.* BALLAL.....**I. L. Rep. 1 Bom. 75.**

OBSTRUCTION TO ANCIENT WINDOWS.

See **Mandatory Injunction. 1.**

JAMNADAS *v.* ATMARAM ... **I. L. Rep. 2 Bom. 133.**

See **Light and Air. 1.**

SARUBHAI *v.* BAPU...**I. L. Rep. 2 Bom. 660.**

OBSTRUCTION TO PUBLIC THOROUGHFARE—Suit to remove—Special Damage.

See **Right to Sue. 1. 2. 3. 4. 5.**

SATHU KADIR *v.* IBRAHIM AGA...**I. L. Rep. 2 Bom. 457.**

GEHANJI *v.* GANPATI... **I. L. Rep. 2 Bom. 467.**

KARIM BAKSH *v.* BUDHA ..**I. L. Rep. 1 All. 249.**

FAZAL HAQ. *v.* MAHA CHAND... **Ibid. 557.**

RAJ KOOMAR SINGH *v.* SAHEBZADA ROY ...**I. L. Rep. 3 Cal. 20.**

See **Bengal Act III. of 1864.**

EMPRESS *v.* PROJONATH DEY ... **I. L. Rep. 2 Cal. 425.**

OBSTRUCTION TO PURCHASER AT SALE IN EXECUTION OF DECREE.

See **Sale in Execution of Decree. 12.**

HAZARATOOLLAH *v.* BROJONATH GHOSE ... **I. L. Rep. 3 Cal. 729.**

OCCUPANCY—Extinguishment of Right of—by Non-Payment of Rent—Submerged Lands—Re-formation.

See **Extinguishment of Right of Occupancy.**

HEMNATH DUTT *v.* ASHGUR SINDAR...**I. L. Rep. 4 Cal. 894.**

—— Inheritance to Rights of.

See **Act XVIII. of 1873, § 9. 2.**

BHAGWANTI *v.* RUDR MAN TIWARI. **I. L. Rep. 2 All. 145.**

—— Right of—how and by whom can be acquired—Firm of Capitalists.

See **Right of Occupancy. 5.**

RAI KOMUL DOSSEE *v.* LAIDLEY... **I. L. Rep. 4 Cal. 957.**

Lessee of *Jalkar*.

See **Right of Occupancy. 6.**

BOLLYE SATEE *v.* AKRAM ALLY... **I. L. Rep. 4 Cal. 961.**

——Right of—in *Jalkar*.

See **Jalkar.**

JUGGOBUNDHOO *v.* PROMOTHONATH. **I. L. Rep. 4 Cal. 767.**

Digitized by Google

OCCUPANCY—*contd.*

See **Right of Occupancy. 6.**

BOLLYE SATEE *v.* AKRAM ALLY... **I. L. Rep. 4 Cal. 961.**

—— Right of—of Pattadar Ryot.

See **Rights of Mirasdars.**

FAKIR MUHAMMAD *v.* TIRUMALA CHARIAR ..**I. L. Rep. 1 Mad. 205.**

—— Right of — in *Sir* Land — Ex-Proprietary Tenant.

See **Act XVIII. of 1873, § 7. 1.**

BAKHAT RAM *v.* WAZIR ALI ..**I. L. Rep. 1 All. 448.**

—— Right of—not Transferable.

See **Right of Occupancy. 2. 4.**

ABLAKH RAI *v.* AUDIT NARRAIN RAI ..**I. L. Rep. 1 All. 353.**

DWARKA NATH *v.* HURRISH CHUNDER ..**I. L. Rep. 4 Cal. 925.**

OCCUPANCY HOLDING — Transfer of a Portion of.

See **Transfer of Portion of Occupancy Holding.**

TIRTHANUND THAKOOR *v.* MUTTY LALL MISSER...**I. L. Rep. 3 Cal. 774.**

OCCUPANCY RIGHTS — In Chakeran Lands.

See **Chakeran Lands.**

HURROGOBIND RAHA *v.* RAMRUTNO DEY...**I. L. Rep. 4 Cal. 67.**

—— Transfer of.

See **Beng. Act VIII. of 1869.**

LAL SAHOO *v.* DEV NARAIN SINGH. **I. L. Rep. 3 Cal. 781.**

OCCUPANCY RYOT—Non-Payment of Rent by—for more than Twelve Years – Admission of Liability—No Adverse Possession.

See **Limitation. 21.**

PORESH NARAIN *v.* KASSI CHUNDER...**I. L. Rep. 4 Cal. 661.**

OCCUPANCY TENANT — Inheritance to Right of Occupancy.

See **Act XVIII. of 1873, § 9.**

BHAGWANTI *v.* RUDR MAN TIWARI. **I. L. Rep. 2 All. 145.**

OCCUPANCY TENANT—*contd.*

—— Right of—When transferable.

See **Right of Occupancy. 2. 4.**

ABLAKH RAI *v.* AUDIT NARRAIN RAI...**I. L. Rep. 1 All. 353.**

DWARKA NATH *v.* HURRISH CHUNDER...**I. L. Rep. 4 Cal. 925.**

—— Sale of Right of — in Execution of Decree of Landholder.

See **Act XVIII. of 1873, § 9. 1.**

MURAD BEGAM *v.* LAND MORTGAGE BANK ..... **I. L. Rep. 1 All. 547.**

OFFENCE COMMITTED AT CYPRUS—*Act XI. of* 1872, §§ 3 *and* 9—*Liability of Native Indian British Subject for Offence committed in Cyprus—Native State—Act V. of* 1869. §§ 170, 171.] *Held*, *Stuart*, C. J., dissenting), that a Native Indian subject of Her Majesty, being a soldier in Her Majesty's Indian army, who committed a murder in Cyprus while on service in such army, and who was accused of such offence at Agra, might, under § 9 of Act XI. of 1872, be dealt with in respect of such offence by the Criminal Courts at Agra, Cyprus being a "Native State," in reference to Native Indian subjects of Her Majesty, within the meaning of that Act, and the provisions of § 9 of that Act being undoubtedly within the competency of the Legislature.

Per Stuart, C.J.—Read by the light of the preamble to Act XI. of 1872, the term Native State in §§ 3 and 9 means, and means only, a place where, by treaty, &c., the Governor General of India in Council has jurisdiction; Cyprus, therefore, is not a Native State within the meaning of that Act, nor is it a "Native State" in any sense whatever. It has for the present been ceded by the Turkish Government to the Crown of England, and by the terms of the "convention of defensive alliance between Great Britain and Turkey," signed the 4th of June 1878, so far from being a place in the sense of a "Native State" without and beyond the dominion of Her Majesty, it is directly administered by her officers, and is under Her Majesty's dominion and control.

(P. 231.) "But there is another and most serious consideration which I feel bound to notice, *viz.*, whether it is within the powers of the Indian Legislature, not to pass such a law as Act XI. of 1872, but a law capable of such a construction as is necessary to support this conviction. In

Digitized by Google

OFFENCE COMMITTED AT CYPRUS —*contd.*

other words, can the Government of India in its legislative capacity pass a law for trial and punishment in respect of offences committed in other territories and jurisdictions governed and administered by, and equally representing, the Crown and Government of England? I think the answer to these questions in the affirmative might be successfully disputed. EMPRESS *v.* SARMUKH SINGH .....**I. L. Rep. 2 All. 218, 1879, F. B.**

S. C. under **Criminal Procedure Code, Act X. of 1872, § 297. 7.**

OFFENCES COMMITTED IN FOREIGN TERRITORY.

See **Criminal Procedure Code, Act X. of 1872, § 67. 1.**

REG. *v.* LAKHYA ... **I. L. Rep. 1 Bom. 50.**

See **Criminal Procedure Code, Act X. of 1872, § 157. 1.**

Reg. *v.* LOCHA ... **I. L. Rep. 1 Bom. 340.**

—— Jurisdiction of British Courts.

See **Criminal Procedure Code, Act X. of 1872, § 67. 2.**

REG. *v.* ADIVIGADU...**I. L. Rep. 1 Mad. 171.**

—— *British Subject—Offence committed at Zanzibar—Jurisdiction of the High Court—Stat.* 6 *and* 7 *Vict., C.* 94—*Stat.* 28 *and* 29 *Vict., C.* 116—*Stat.* 29 *and* 30 *Vict., C.* 87—*Order in Council of 9th August* 1866—*Evidence—Depositions—Evidence Act I. of* 1872, § 33.] The High Court of Bombay has jurisdiction to try a British subject accused of having committed murder at Zanzibar, and sent by the British Consul at Zanzibar to Bombay for trial. A prisoner, a British subject, accused of having committed murder at Zanzibar, was sent by the British Consul there for trial before the High Court at Bombay. The Consul could not enforce the attendance of witnesses at Bombay, but he transmitted to the High Court the depositions which he had taken in the course of the inquiry he had held with regard to the commission of the alleged offence. In the absence of the witnesses, the depositions were tendered in evidence at the trial in Bombay :—

OFFENCES COMMITTED IN FOREIGN TERRITORY—*contd.*

Held, that by the capitulation entered into with the Sultan of Zanzibar, the British Consul there had full authority to hold an inquiry in cases of offences like that under trial, and that by virtue of Stat. 6 and 7 Vict., C. 94, and Clauses 13, 14, 23, and 24 of the Order in Council, dated 9th August 1866, the Consul was authorized to take the depositions of the witnesses, and that they were admissible under § 33 of the Indian Evidence Act I. of 1872. EMPRESS *v.* DOSSAJI GULAM HUSSEIN. *Sargeant*, J.....**I. L. Rep. 3 Bom. 334, 1878.**

OFFENCE COMMITTED BEFORE THE PENAL CODE CAME INTO OPERATION—*Beng. Reg. IV. of* 1797—*Act XVII. of* 1862—*Act I. of* 1868, § 6.] The prisoner was tried under Act XVII. of 1862, found guilty, and sentenced under Beng. Reg. IV. of 1797 to transportation for life, for a murder committed in 1861, before the Penal Code came into operation ; and the case was sent up to the High Court to confirm the sentence. Beng. Reg. IV. of 1797 was repealed by Act. XVII. of 1862, and that Act was wholly repealed by Act VIII. of 1868 and Act X. of 1872 :—

Held, on a reference to the Full Bench, that the conviction was illegal, § 6 of Act I. of 1868 not being applicable. EMPRESS *v.* DILJOUR MISSER.....**I. L. Rep. 2 Cal. 225, 1876, F. B.**

2. —— *Beng. Reg. IV. of* 1797, § 3—*Act XVII. of* 1862—*Act I. of* 1863, § 6.] Up to the 1st of January 1862, the law under which persons were liable to trial and punishment for the offence of murder was declared in the Regulations. By Act XVII. of 1862, §§ 1 and 2, the Regulations and Acts prescribing punishments for offences were repealed from the 1st of January 1862, "*except as to any offence committed before the 1st of January* 1862;" and by § 4 of the same Act the Acts and Regulations theretofore regulating procedure in trials for offences were repealed, in respect of those parts of India in which the Code of Criminal Procedure came into operation on the 1st January 1862, and it was declared that no person convicted of an offence committed before the 1st of January 1862, should be deprived of any right of appeal or reference to a Sudder Court, which he would have enjoyed under any of the Acts or Regulations thereby repealed.

Digitized by Google

OFFENCE COMMITTED BEFORE THE PENAL CODE CAME INTO OPERATION—*contd.*

The effect of Act XVII. of 1862 was to leave the Regulations and Acts under which offences were theretofore punishable unrepealed in respect of an offence committed before the 1st January 1862. By Act I. of 1868, § 3, it is provided that in all Acts made for the purpose of reviving, wholly or partially, a Statute, Act, or Regulation repealed, it shall be necessary expressly to state such purpose, and by § 6 of the same Act it is enacted that the repeal of any Statute, Act, or Regulation shall not affect any thing done, or any offence committed, or any fine or penalty incurred before the repealing Act shall have come into operation. By the repealing Act VIII. of 1868, the 1st, 2nd, and 7th Sections of Act XVII. of 1862 were repealed, and by Act X. of 1872 the sections of the Act then unrepealed were repealed. There being no express words to that effect, the repeal of Act XVII. of 1862 did not revive the Regulations in so far as they had been repealed by the Act, but neither did they operate to repeal those Regulations in so far as they were not repealed by the Act. Thus in respect of offences committed prior to the 1st January 1862, the penalties prescribed by the Regulations were not affected by the repeal of Act XVII. of 1862, nor were the Regulations prescribing punishments for offences, which were in force before the passing of Act XVII. of 1862, repealed in respect of offences committed before the 1st January 1862, prior to the passing of Act I. of 1868.

To the several repealing Acts passed since Act I. of 1868 came into force, the provisions of § 6 of that Act apply, and the repeal of a Regulation subsequently to the passing of that Act does not relieve offenders from the penalties to which they were liable under the Regulations.

Held accordingly, where a person committed murder in 1855, that such person was punishable under the Regulations.

Held also that, inasmuch as such a right as the right of reference given by § 3 of Reg. IV. of 1797 accrues on conviction, and therefore in the present case had not accrued before Act XVII. of 1862 was repealed, it was doubtful whether a person convicted of murder committed before the 1st January 1862, has such a right. EMPRESS *v.* MULNA. *Turner* and *Spankie*, JJ...**I. L. Rep. 1 All. 599, 1878.**

OFFENCE COMMITTED BY PUBLIC SERVANT, AS SUCH—Sanction to prosecute.

See **Sanction to Prosecute. 4.**

IMPX. *v.* LAKSHMAN...**I. L. Rep. 2 Bom. 481.**

OFFENCE MADE UP OF PARTS—Conviction on several Charges—Sentence.

See **Criminal Procedure Code, Act X. of 1872, § 454. 1.**

EMPRESS *v.* BUDH SINGH...**I. L. Rep. 2 All. 101.**

OFFENCE MADE UP OF SEVERAL OFFENCES — *Sentence — Rioting — Hurt.*] Rioting and causing hurt in the course of such rioting are distinct offences, and each offence is separately punishable. EMPRESS *v.* RAM ADHIN. *Pearson*, J.....**I. L. Rep. 2 All. 139, 1879.**

OFFENCE PUNISHABLE WITH TRANSPORTATION FOR LIFE OR IMPRISONMENT FOR TERM OF YEARS—Sentence when Transportation for less than Life awarded.

See **Penal Code, § 59.**

REG. *v.* NAIADA.....**I. L. Rep. 1 All. 43.**

OFFENCE TRIABLE WITH AID OF ASSESSORS—Trial of—by Jury—Appeal on Facts.

See **Trial by Jury.**

EMPRESS *v.* MOHIM CHUNDER RAI. **I. L. Rep. 3 Cal. 765.**

OFFENCE TRIABLE IN A SUMMARY WAY—Offence under § 49, Act XXI. of 1856 is an.

See **Criminal Procedure Code, Act X. of 1872, § 222. 1.**

EMPRESS *v.* BAIDANATH DAS.....**I. L. Rep. 3 Cal. 366.**

OFFICE, DISTURBANCE OF.

See the Cases collected under **Disturbance of Office.**

OFFICIAL ASSIGNEE—Manager of Joint Hindu Family carrying on Joint Ancestral Trade—Title of Official Assignee of.

See **Hindu Law—Maintenance of Widow. 9.**

JOHURRA BIBEE *v.* SREEGOPAL ..**I. L. Rep. 1 Cal. 470.**

Digitized by Google

OFFICIAL ASSIGNEE—*contd.*

—— Purchaser from—of Manager of Joint Hindu Family carrying on Joint Ancestral Trade.

See **Hindu Law—Maintenance of Widow. 9.**

JOHURRA BIBEE *v.* SREEGOPAL..... **I. L. Rep. 1 Cal. 470.**

—— Right of—on Sale of Land for Arrears of *Tirvai* (Rent).

See **Insolvency. 2.**

CHINNA S. MUDALI *v.* KANDASWAMI REDDI...**I. L. Rep. 1 Mad. 59.**

OIL AND FLOUR MILLS, AND ENGINE AND BOILER—Sale of—in Execution of Decree of Small Cause Court.

See **Fixtures.**

MILLER *v.* BRINDABUN...**I. L. Rep. 4 Cal. 946.**

OMISSION TO GIVE INFORMATION TO THE POLICE OF OFFENCE.

See **Criminal Procedure Code, Act X. of 1872, § 90.**

EMPRESS *v.* ACHIRAJ LALL...**I. L. Rep. 4 Cal. 603.**

EMPRESS *v.* SASHI BHUSAN CHUCKRABUTTY...**Ibid. 623.**

OMISSION TO ISSUE FRESH PROCLAMATION OF SALE—On Adjournment of Sale in Execution of Decree—Material Irregularity.

See **Sale in Execution of Decree. 6.**

GOPEE NATH DOBEY *v.* ROY LACHMIPAT.....**I. L. Rep. 3 Cal. 542.**

—— On Release from Attachment before Sale, of Part of Property advertised for Sale—Material Irregularity.

See **Sale in Execution of Decree. 11.**

SHIB PROKASH SINGH *v.* SARDAR DAYAL SINGH.....**I. L. Rep. 3 Cal. 544.**

OMISSION TO RECORD OR TAKE OPINION OF ASSESSORS ON ACQUITTAL OF AN ACCUSED—No Ground for Revision.

See **Assessors.**

NARRAIN DASS...**I. L. Rep. 1 All. 610.**

OMITTING TO SEEK FOR RELIFF IN RESPECT OF A PORTION OF CLAIM.

See **Civil Procedure Code, Act VIII. of 1859, § 7. 1.**

TULSI RAM *v.* GANGA RAM...**I. L. Rep. 1 All. 252.**

OMITTING TO SUE FOR PORTION OF CLAIM.

See **Civil Procedure Code, Act VIII. of 1859, § 7. 2. 3.**

ILAHI BAKSH *v.* IMAM BAKSH...**I. L. Rep. 1 All. 324.**

LACHMAN SINGH *v.* SANWAL SINGH.....**I. L. Rep. 1 All. 543.**

—— Simultaneous Suits.

See **Civil Procedure Code, Act VIII. of 1859, § 7. 4. 5.**

KALESHAR PRASAD *v.* JAGAN NATH.....**I. L. Rep. 1 All. 650.**

RAM TURRUN *v.* HOSSEIN BUKSH. **I. L. Rep. 3 Cal. 735.**

ONLY SON—Adoption of.

See **Hindu Law—Adoption. 9.**

HANUMAN TIVARI *v.* CHIRAI... **I. L. Rep. 2 All. 164.**

—— Adoption of—Void in Bengal.

See **Hindu Law—Adoption. 3.**

MANICK CHUNDER *v.* BHUGGOBUTTY...**I. L. Rep. 3 Cal. 443.**

ONUS PROBANDI—In Application to be declared Insolvent under Civil Procedure Code.

See **Civil Procedure Code, Act X. of 1877, § 344.**

MUMTAZ HOSSEIN *v.* BRIJ MOHUN. **I. L. Rep. 4 Cal. 888.**

—— Of Cessation of Relation of Landlord and Tenant.

See **Landlord and Tenant. 5. 9.**

—— Of Custom among Khojas at variance with Hindu Law of Inheritance.

See **Khojas. 1.**

RAHIMATBAI *v.* HIRBAI .....**I. L. Rep. 3 Bom. 34.**

Digitized by Google

ONUS PROBANDI—*contd.*

—— Of Customary Right to confirm Election of Mohunt.

See **Mohunt.**

RAJAH MUTTU RAMALINGA *v.* PERIANAYAGUM...**L. Rep. 1 I. A. 209.**

—— Deed of Sale or Gift by *Parda* Woman.

See **Pardanashin Lady.**

TACOORDEEN TEWARRY *v.* NAWAB SYED ALI HOSSEIN KHAN .. **L. Rep. 1 I. A. 192.**

—— that Goods carried by Railway Company were ready for Delivery for a Reasonable Time after Arrival.

See **Railway Company. 1.**

SURUTRAM *v.* THE G. I. P. RY. Co....**I. L. Rep. 3 Bom. 96.**

—— Of Joint Estate.

See **Hindu Law — Undivided Family. 6.**

BANNOO *v.* KASHEE RAM...**I. L. Rep. 3 Cal. 315.**

—— That *Lakhiraj* Grant was anterior to 1st December 1790 A.D.

See **Onus Probandi. 9.**

—— Mortgage of Ancestral Property by Father —Suit against Father and Sons to enforce same.

See **Onus Probandi. 7.**

—— Of Negligence—Carrier—Loss by Fire.

See **Railway Company. 3.**

ISHWARDASS *v.* THE G. I. P. RY. Co...**I. L. Rep. 3 Bom. 120.**

—— Of Notice.

See **Onus Probandi. 1.**

—— Of Partition and Self-Acquisition.

See **Onus Probandi. 4.**

—— Of Payment of *Hundi*.

See **Onus Probandi. 2.**

—— Purchase from (Hindu) Heir or Devisee—*Onus Probandi* of Existence of Unpaid Debts of Ancestor or Testator, and Heir's or Devisee's Intention to misapply Purchase Money.

See **Limitation. 38a.**

GREENDER CHUNDER *v.* MACKINTOSH...**I. L. Rep. 4 Cal. 897.**

ONUS PROBANDI—*contd.*

—— Of Self-Acquisition.

See **Onus Probandi. 4.**

—— In Suit to Redeem.

See **Onus Probandi. 6.**

—— In Suit for Redemption of a Mortgage in Oudh, that the Term had not expired before 13th February 1856.

See **Act I. of 1869. 1.**

RAJAH KISHEN DUTT *v.* NARENDAR BAHADOOR...**L. Rep. 3 I. A. 85.**

—— In Suit for Resumption, against Auction Purchaser at Sale under Beng. Reg. VIII. of 1819.

See **Onus Probandi. 3.**

—— In Suit to Resume Invalid *Lakhiraj* Grant.

See **Onus Probandi. 9.**

—— In suit for Separate Maintenance, by Widow.

See **Hindu Law—Maintenance of Widow. 11.**

KASTURBAI *v.* SHIVAJIRAM DEVKURUN...**I. L. Rep. 3 Bom. 372.**

—— In Suit for Separate Maintenance, by Wife.

See **Hindu Law—Maintenance of Wife.**

KASTURBAI *v.* SHIVAJIRAM...**I. L. Rep. 3 Bom. 372. 382.**

—— In Suit for Setting Aside Deeds.

See **Setting Aside Deeds.**

TACOORDEEN TEWARRY *v.* NAWAB SYED ALI HOSSEIN KHAN... **L. Rep. 1 I. A. 192.**

—— In Suit to Set Aside Sale of Ancestral Property by Father in Discharge of Debts.

See **Hindu Law — Alienation of Ancestral Property. 2.**

GIRDHAREE LALL *v.* KANTOO LALL. **L. Rep 1 I. A. 321; 14 Beng. L. Rep. 187.**

See **Onus Probandi. 8.**

—— That *Vatandar Joshi* is disentitled to officiate.

See **Onus Probandi. 5.**

1.—— *Purchase* bonâ fide for *Value without Notice.*] The *onus* lies on a person who claims priority over another, on the ground that he took

Digitized by Google

ONUS PROBANDI—*contd.*

with notice of an earlier security, to prove that he had notice. The purchaser pleading absence of notice is held strictly to proof of the payment that being an affirmative matter; but when he has established his good faith thus far, it devolves on the opposite party to prove notice, or the circumstances from which the Court may infer a knowledge or means of knowledge of the previous transaction. *Per West*, J. .....LALUBHAI SURCHAND *v.* BAI AMRIT...**I. L. Rep. 2 Bom. 299, 1877.**

Followed in *Hasha* v. *Ragho* ..**I. L. R. 6 Bom. 165.**

2.—— Hundi—*Payment — Limitation Act XIV. 1859—Act IX. of 1871, Sched II., Art. 60—Adding Parties.*] On 2nd August 1872, *A. K.* filed a plaint against *M.H.* and *M. R.*, in which he alleged that on 1st April 1870, *M. R.* had given a *hundi* for Rs. 500, for value received, to *A. K.*; that on the 27th March 1871, *M. H.* purchased this *hundi* from *A. K.*, promising to pay him Rs. 534 for it; that *M. H.* gave the *hundi* to his brother *I. H.* for the purpose of obtaining payment of the amount from *M. R.*, and that *I. H.* subsequently informed the plaintiff that the *hundi* was lost. *A. K.* therefore prayed that the defendants, *M. H.* and *M. R.* might be decreed to pay him Rs. 534 with profit and interest. *M. H.* denied that he had purchased the *hundi* from *A. K.*, who, he alleged, had given the *hundi* to *I. H.* to get cashed. *M. R.* admitted that he had executed the *hundi* and had given it to the plaintiff for Rs. 500; but he alleged that it had been presented to him for payment by *I. H.*, to whom he had paid the amount with interest on 31st March 1871, and he produced the *hundi* with a receipt, purporting to be by *I. H.*, indorsed on it. The trying Judge, after settlement of the issues, on 25th June 1874 added *I. H.* as a party defendant. *I. H.* alleged that *A. K.* had given him the *hundi* for the purpose of getting it cashed, denied the payment by *M. R.*, alleged the indorsement on the *hundi* to be a forgery, and pleaded limitation.

Held, that *M. R.* having admitted the execution of the *hundi* for value received, the burden of proving the payment pleaded by him of the amount due on it to *I. H.* lay on *M. R.* No burden whatever lay on the plaintiff; the whole weight of proof of payment and the genuineness of the receipt was imposed by law on *M. R.*, who alleged the payment, and relied on the receipt he produced.

The possession of the *hundi* by *M. R.*, though a circumstance in his favour, did not itself

ONUS PROBANDI—*contd.*

amount to proof of payment, or absolve him from the necessity of proving that he had paid the amount of the *hundi* to *I. H.*

Held, also, with reference to § 22 of Act IX. of 1871, that the law of limitation applicable to the suit so far as *I. H.* was concerned, was Sched. II., Art. 60, of that Act, and therefore, that if the payment by *M. R.* to *I. H.* were not proved to have been made within three years before 25th June 1874, the day on which *I. H.* was added as a defendant, the suit as against him was barred. *Dayal Jairas* v. *Khatao Ladha* (12 Bom. H. C. Rep. 97) and *Chinnaswami Iyengar* v. *Gopalcharry* (7 Mad. H. C. Rep. 392) dissented from. ABDUL KARIM *v.* MANJI HANSRAJ. *Westropp*, C.J., and *N. Harridas*, J., after consulting *Melvill* and *Kemball*, JJ...**I. L. Rep. 1 Bom. 295, 1876.**

3. —— *Suit for Resumption—Auction Purchaser.*] Certain lands which had been let out in putni were, on default by the putnidar in payment of rent, sold by auction under Bengal Regulation VIII. of 1819, and purchased by *M.*, who granted them in putni to the plaintiff. In a suit for resumption, on the allegation that the defendants were in possession of a portion of the land as invalid *lakhiraj* by withholding payment of the *mál* rent thereof after 1793, the defence was that the lands in dispute were valid rent-free lands existing as such before 1790:—

Held, that, on the grounds of the decision of the Privy Council in *Harihar Mukopadhya* v. *Madab Chandra Babu* (8 Bengal L. Rep. 566; S. C. 14 Moo. I. A. 152), the principle that the *onus* is on the plaintiff to show that the lands are *mál* lands applies to cases where the plaintiff, as in the present case, is the representative of an auction purchaser. ARFUNESSA *v.* PEARY MOHUN MOOKERJEE. *Glover* and *Mitter*, JJ...**I. L. Rep. 1 Cal. 378, 1876.**

4. —— *Partition— Self-Acquisition — Suit by Hindu Widow for Letters of Administration to Estate of Deceased Husband.*] One *K. C.*, a Hindu, died in 1876 intestate and without issue, and his widow, claming to be the only legal personal representative of the deceased, presented a petition praying that letters of administration might be granted to her. To this application a *caveat* was lodged by a person claiming the whole family property as an undivided second-cousin of the deceased, and sole surviving member of the family. The widow alleged that the father of the deceased and the father of the caveator were

Digitized by Google

ONUS PROBANDI—*contd.*

divided, and that the whole of the property left by her husband was the self-acquisition of his father. The Court of first instance found against the division and self-acquisition, throwing the burden of proof of each question entirely on the party asserting the facts, *viz.*, the widow, the plaintiff. On appeal it was contended for the appellant (the plaintiff) that the *onus* on the plaintiff was sufficiently discharged when it was shown that the two branches of the family traded separately, and that certain items of property were acquired in the names of members of the branch of the family to which the plaintiff's husband belonged, and that it then rested with the other side to show that there were joint funds from which the purchase could have been made.

Held, in accordance with the view of the Judicial Committee of the Privy Council in *Dhurm Das Panday* v. *Mussamat Shama Soondri Dibiah* (3 Moo. I. A 229, 240; S. C. 5 W. R., P. C. 21) and the observations of Couch, C. J., in *Taruk Chunder Totadar* v. *Joodhester Chunder Kondoo* (19 W. Rep. 178) that such contention could not be maintained. VEDAVALLI *v.* NARAYANA. *Innes* and *Busteed*, JJ...**I. L. Rep. 2 Mad. 19, 1877.**

5. —— Vatandar Joshi.] The burden of proving that the *Vatandar Joshi* of a village is not entitled to officiate and take fees in the families of any particular caste, lies upon the persons asserting exemption. RAJA SHIVAPA *v.* KRISHNAPPA. *Mevill* and *Kemball*, JJ...**I. L. Rep. 3 Bom. 232, 1879.**

S. C. under **Disturbance of Office. 2.**

6. —— *Mortgage—Redemption— Burden of Proof of Ownership—Act I. of* 1872, §110—*Adverse Possession.*] The plantiffs, alleging that their ancestor had in 1842 mortgaged certain villages to the ancestors of the defendants for Rs. 2,500, claimed possession of 15 biswas of the villages on the ground that the mortgage debt had been satisfied by the usufruct. The defendants alleged that as to 10 biswas of each village, the plaintiffs' ancestors had sold them in 1842 to their (the defendants') ancestor for Rs. 1,250; and as to the remaining 10 biswas of each village, that their said ancestors had been put in possession thereof by the plaintiffs' ancestor by way of mortgage, to secure a sum of Rs. 14,000; that that sum had not yet been recovered from the usufruct of those 10 biswas; and that the claim of the plaintiffs to the extent of the property sold

ONUS PROBANDI—*contd.*

was barred by limitation, as they, the defendants, had been in adverse possession thereof for upwards of ten years. It appeared that the plaintiffs' said ancestor died on the 5th of September 1860, up to which time his name had been recorded as lambardar and proprietor of the villages. On the 21st of October 1860, the general agent of the defendants objected to the names of the plaintiffs' ancestor's heirs being recorded as proprietors, asserting the title of the defendants under the sale and mortgage: and on the 26th April 1861, notwithstanding the opposition of the plaintiffs, the names of the defendants were recorded as lambardars. The present suit was instituted on the 19th of April 1873.

Held by *Pearson*, J.—As regards the 10-biswa share said to have been sold by the plaintiffs to the defendants' ancestor, and which was in the defendants' possession, the burden of proving that the defendants were not the owners thereof lay on the plaintiffs (§ 110 of the Evidence Act I. of 1872); and that the plaintiffs were precluded from recovering possession of that portion of the claimed property, by the fact that the defendants had held adverse possession of it for more than twelve years, for the adverse possession of the defendants commenced from the time when their title as owners by purchase was openly set up in the face of the heirs of the plaintiffs' ancestor, on the 21st of October 1860, and not merely from the 19th of April 1861, the date of the order for the recognition and registration of their title.

As to the 10-biswa share admitted by the defendants to be mortgaged, the allegation on which the suit was brought, *viz.*, that the entire property was mortgaged for Rs. 2,500, had broken down; and as it was for the plaintiffs to prove their right of re-entry, and they had failed to do so, they were not entitled to re-entry on any other terms than those stated by the defendants.

By *Turner*, J.—The defendants and their ancestor having been in possession of the property for upwards of twelve years, the presumption they were in possession as proprietors must be rebutted by the plaintiffs, who must otherwise fail. In respect of one moiety of the property the presumption was rebutted by the admission and proof that the defendants' possession was that of mortgagees. But in respect of the other moiety which

Digitized by Google

ONUS PROBANDI—*contd.*

they claimed to hold as purchasers, the plaintiffs were bound to produce evidence to rebut the presumption arising out of possession, or must fail. The circumstance that one moiety of the property was admittedly held on mortgage might lend corroboration to the evidence, if there was any, that the defendants' ancestor held the entire property as mortgagee, but by itself it would not relieve the plaintiffs from the burden of rebutting the presumption arising for the defendants' possession.

As to the property admittedly under mortgage, the burden of proof lay on the defendants, who alleged that the debt was Rs. 14,000, and that a large balance was still owing. And though the plaintiffs had not proved that the whole estate was mortgaged, yet that fact did not disentitle them altogether to relief, for if a plaintiff fails to prove his whole claim, he may nevertheless obtain such relief as falls fairly within the purview of his claim. The plaintiffs, therefore, were entitled to have an account taken in this suit of what might be due on the mortgage of the moiety of the estate, and to obtain such relief as they might be found entitled to on the taking of such account.

By *Stuart*, C. J.—Such account should extend to the whole property; the burden of proof lay on the defendants. Anything like adverse possession by them could not be considered to have commenced till the 19th of April 1861, between which date and that of the institution of the suit twelve years had not elapsed.

By *Spankie* and *Oldfield*, JJ.—The burden of proof was on the plaintiffs; and they were not entitled in this suit, in which their claim as brought had not been established, to claim to redeem the moiety admitted by the defendants to be held on mortgage, on taking an account. RATAN KUAR *v.* JIWAN SINGH.....**I. L. Rep. 1 All. 194, 1876.**

7. —— *Hindu Law — Mitakshara — Mortgage by Father during Minority of Son.*] A Hindu, subject to the Mitakshara law, and forming with his sons an undivided family, mortgaged certain ancestral immoveable estate during the minority of his sons. In a suit by the mortgagee against the father and sons to recover the mortgage debt "by sale of the mortgaged property, and out of other properties, as well as from the person" of the father:—

Held, that the *onus* lay on the plaintiff to show for what purpose the loan was contracted, and

ONUS PROBANDI—*contd.*

that that purpose was one which justified the father in charging, or which the plaintiff had at least good ground for believing did justify the father in charging, the sons' interests in the ancestral immoveable property. BHEEKNARAIN SINGH *v.* JANUK SINGH. *Jackson* and *White*, JJ. **I. L. Rep. 2 Cal. 438, 1877.**

8. —— *Hindu Law—Suit to set aside Sale of Ancestral Estate by Father during Son's Minority.*] In a suit by a son to set aside a sale of certain property made by his father during the plaintiff's minority, on the ground that the property was ancestral and the sale improper, being without the plaintiff's consent, and not justified by necessity, it appeared that the property in dispute originally formed part of the estate of the plaintiff's grandfather, who divided his ancestral and self-acquired property with his brother; that on the death of the plaintiff's grandfather his sons, the uncle and father of the plaintiff, divided between them the property of their father, the plaintiff's father receiving the property in dispute as his share. The plaintiff's family were governed by the Mitakshara law. The sale sought to be set aside was made in 1862, and the suit, instituted in 1874, was brought seven or eight years after the plaintiff had attained his majority:—

Held, that the property was ancestral property notwithstanding the partition by the plaintiff's father, and that the plaintiff acquired an interest therein at his birth.

Held also, that on the principle of the decision of the Privy Council in *Girdharee Lall* v. *Kanto Lall* (14 Beng. L. Rep. 187, L. Rep. 1 I. A. 321), the true question for consideration was, not whether there was any legal necessity for the sale, but whether the sale was to satisfy a debt which if contracted by the father and left unpaid by him, the son would, under the Hindu law, be under an obligation to discharge. If it was to satisfy such a debt that the property was sold, then, according to the above Privy Council decision, the sale was valid. That decision shows that it is only in respect of debts contracted for an immoral purpose that the son can say that, under Hindu law, he is not liable. The question, therefore, which the Courts below ought to have considered, was whether the debt for which his property was sold to satisfy was incurred for an immoral purpose.

Probably the question of *onus* in such case is one which must be determined according to the

Digitized by Google

ONUS PROBANDI—*contd.*

circumstances of each case. In this case, however, the *onus*, under the circumstances of the case, lay on the plaintiff to show that the debt to satisfy which the sale was made, was incurred for an immoral purpose.

Per Markby, J.—"I do not mean it to be inferred from what I have said that a son is bound to discharge debts that are illegal though not immoral; that is altogether a different question, and not now under consideration." ADURMONI DEYI *v.* CHOWDHRY SIB NARAIN KUR. *Markby* and *Prinsep*, JJ.....**I. L. Rep. 3 Cal. 1, 1877.**

9. —— *Evidence Act I. of* 1872, §§ 101, 103, 106 — *Lakhiraj Grant.*] In 1862, the plaintiff brought a resumption suit against the defendant's mother (under whom the defendant claimed) in respect of the lands in dispute, on the ground that she held them by an invalid lakhiraj title. The defendant in the suit contested the claim, but the plaintiff obtained a decree that he was entitled to assess the land. After some years the plaintiff brought the present suit against the present defendant to have the rent assessed, and the defendant set up by way of plea to the jurisdiction of the Civil Court, that the lakhiraj grant, under which the defendant in the resumption suit claimed, was previous to 1790; and the Court of first instance raised the following issue — "Whether the resumed lakhiraj was of anterior date to the 1st of December 1790?":—

Held, that the objection made to the jurisdiction of the Court having been raised affirmatively by the defendant, by a statement that the lakhiraj grant was previous to 1790, the burden of proving the affirmative of the issue which was framed to meet that allegation was on the defendant. HEERA LALL PRAMANICK *v.* BARIKUNNISSA BIBEE. *Garth*, C. J., and *Birch*, J...**I. L. Rep. 3 Cal. 501; 1 Cal. Rep. 596, 1878.**

OPINION—Evidence of—of Members of Caste to prove a Custom.

See **Khojas. 1.**

RAHIMATBAI *v.* HIRBAI.....**I. L. Rep. 3 Bom. 34.**

OPINION OF ASSESSORS — Omission to take or record—on Acquittal of Accused, no Ground for Revision.

See **Assessors.**

NARAIN DASS...**I. L. Rep. 1 All. 610.**

OPPRESSIVE BARGAIN.

See the Cases under **Unconscionable Bargain.**

ORAL AGREEMENT.

See **Limitation. 93.**

KOYLASH CHUNDER *v.* BOYKOONTO NATH...**I. L. Rep. 3 Cal. 619.**

ORAL AGREEMENT CONTRADICTING WRITTEN CONRACT—Evidence of a Contemporaneous.

See **Mortgage. 22.**

MORAN *v.* MITTU BIBEE.....**I. L. Rep. 2 Cal. 58.**

ORAL AGREEMENT TO RESCIND REGISTERED CONTRACT.

See **Incomplete Contract.**

UMEDMAL *v.* DAVU...**I. L. Rep. 2 Bom. 547.**

ORDER UNDER ACT VIII. OF 1859. § 254—Appeal from—Defaulting Purchaser.

See **Appeal—Civil. 17.**

RAM DIAL *v.* RAM DAS...**I. L. Rep. 1 All. 181.**

ORDER ADMITTING REVIEW—Finality of.

See **Review. 9.**

ROY MEGHRAJ *v.* BEEJOY GOBIND. **I. L. Rep. 1 Cal. 197.**

ORDER AWARDING COMMISSION TO ADMINISTRATOR GENERAL, Appeal from.

See **Administrator General's Act II. of 1874, § 27.**

SOMASUNDARAM *v.* ADMINISTRATOR GENERAL...**I. L. Rep. 1 Mad. 148.**

ORDER CANCELLING AUCTION SALE IN EXECUTION, ON THE GROUND OF SALE FOR INADEQUATE PRICE—Suit to Set Aside.

See **Civil Procedure Code, Act VIII. of 1879, §§ 256, 257.**

LUKHAI *v.* DARYAI...**I. L. Rep. 1 All. 374.**

Digitized by Google

ORDER IN COUNCIL OF 9th AUGUST 1866—Jurisdiction of British Consul at Zanzibar.

See **Zanzibar.**

WAGJI KORJI *v.* THARIA TOPAN... **I. L. Rep. 3 Bom. 58.**

—— Offence by British Subject committed in Zanzibar — Jurisdiction of Consul and High Court of Bombay.

See **Offence committed in Foreign Territory. 1.**

EMPRESS *v.* DOSSAJI GULAM HUSEIN.....**I. L. Rep. 3 Bom. 334.**

ORDER FOR DELIVERY OF STOLEN PROPERTY—Appeal from.

See **Government Currency Note.**

EMPRESS *v.* JOGESSUR MOCHI...**I. L. Rep. 3 Cal. 379.**

ORDER FOR DELIVERY OF PROPERTY ALLEGED TO BE STOLEN.

See **Criminal Procedure Code, Act X. of 1872, §§ 415-419. 1. 2.**

In re ANPURNABAI...**I. L. Rep. 1 Bom. 630.**

EMPRESS *v.* NILAMBAR BABU . **I. L. Rep. 2 All. 276.**

ORDER FOR DEPOSIT OF SECURITY BY PERSON ENTITLED TO CERTIFICATE UNDER ACT XXVII. OF 1860—No Appeal from.

See **Appeal—Civil. 4.**

MONMOHINEE *v.* KHETTER GOPAUL. **I. L. Rep. 1 Cal. 127.**

ORDER DIRECTING AWARD TO BE FILED—Appeal from.

See **Appeal—Civil. 13. 13a.**

HUSSAINI BIBI *v.* MOHSIN KHAN... **I. L. Rep. 1 All. 156.**

RAMADHIN *v.* MAHESH.....**I. L. Rep. 2 All. 471.**

See **Arbitration. 4.**

BOONJAD MATHOOR *v.* NATHOO SHAHOO...**I. L. Rep. 3 Cal. 375.**

ORDER IN EXECUTION OF DECREE—Appeal from.

See **Appeal—Civil. 23. 28.**

MURLI DHAR *v.* PURSHOTAM DAS. **I. L. Rep. 2 All. 91.**

ORDER IN EXECUTION OF DECREE —*contd.*

UDA BEGUM *v.* IMAM-UD-DIN...**I. L. Rep. 2 All. 74.**

See **Appeal to the Privy Council. 3.**

PALAK DHARI *v.* RADHA PARSAD. **I. L. Rep. 2 All. 65.**

See **Civil Procedure Code, Act X. of 1877, § 244.**

DALPATBHAI *v.* AMARSING...**I. L. Rep. 2 Bom. 553.**

ORDER IN EXECUTION OF DECREE PASSED BEFORE ACT X. OF 1877 CAME INTO FORCE—Appeal from.

See **Appeal—Civil. 9, 26.**

RUNJIT SINGH *v.* MEHERBAN KOER. **I. L. Rep. 3 Cal. 662.**

THAKUR PRASAD *v.* AHSAN ALI ... **I. L. Rep. 1 All. 668.**

ORDER IN EXECUTION OF DECREE ON SPECIALLY REGISTERED BOND—Appeal from.

See **Appeal—Civil. 7. 11. 12.**

BHYRUB CHUNDER *v.* GOLAP COOMARRY.....**I. L. Rep. 3 Cal. 517.**

RAMANAND *v.* BANK OF BENGAL. **I. L. Rep. 1 All. 377.**

WILAYAT-UN-NISSA *v.* WAJIB-UN-NISSA ..... **Ibid. 583.**

ORDER FIXING AMOUNT OF COURT FEES—Appeal from.

See **Court Fees. 4. 5. 6.**

CHUNIA *v.* RAMDIAL...**I. L. Rep. 1 All. 360.**

NARRAYAN *v.* COLLECTOR OF THANA.....**I. L. Rep. 2 Bom. 145.**

MANOHAR *v.* BAWA...**Ibid. 219.**

ORDER GRANTING APPEAL TO PRIVY COUNCIL—No Appeal from.

See **Letters Patent (Calcutta) 1865, Cl. 15. 1.**

MOWLA BUKSH *v.* KISHEN PERTAB SAHI ..... **I. L. Rep. 1 Cal. 102.**

Digitized by Google

ORDER GRANTING LEAVE TO PROSECUTE UNDER § 41 OF ACT IV. OF 1877—Appeal from.

See **Presidency Magistrates' Act IV. of 1877, § 41.**

JANOKY NATH ROY...**I. L. Rep. 2 Cal. 466.**

ORDER PLACING PARTY ON RECORD, NOT LEGAL REPRESENTATIVE OF DECEASED PARTY—Appeal from.

See **Stat. 24 and 25 Vict., C. 104, § 15. 7.**

POGOSE *v.* CATCHICK...**I. L. Rep. 3 Cal. 708.**

In the matter of POGOSE.....Ibid. 710, n.

ORDER REFUSING LEAVE TO SUE IN FORMA PAUPERIS—Appeal from.

See **Appeal—Civil. 18.**

COLLIS *v.* MANOHAR DAS...**I. L. Rep. 1 All. 745.**

ORDER REFUSING TO POSTPONE SALE IN EXECUTION — Appeal from.

See **Stay of Execution.**

HARROSHANKER PARSHAD...**I. L. Rep. 1 All. 178.**

ORDER REFUSING TO RE-ADMIT APPEAL DISMISSED UNDER § 556 OF ACT X. OF 1877—Appeal from.

See **Appeal—Civil. 21.**

ELAHI BAKSH *v.* MARACHOW...**I. L. Rep. 4 Cal. 825.**

ORDER REFUSING TO RE-HEAR APPEAL HEARD EX-PARTE—Appeal from.

See **Appeal—Civil. 36.**

RANJAS *v.* BAIJNATH...**I. L. Rep. 2 All. 567.**

ORDER REFUSING TO SET ASIDE EX-PARTE DECREE — Appeal from.

See **Appeal—Civil. 2. 19.**

LAKMIDAS *v.* EBRAHIM.....**I. L. Rep. 2 Bom. 644.**

GULAB SING *v.* LACHMAN DAS... **I. L. Rep. 1 All. 748.**

ORDER REJECTING APPEAL AGAINST REFUSAL TO REGISTER—Appeal from.

See **Appeal—Civil. 10.**

SYUD MAHOMED *v.* HADZI ABDULLAH...**I. L. Rep. 3 Cal. 727.**

ORDER REJECTING APPLICATION TO BE DECLARED INSOLVENT UNDER CIVIL PROCEDURE CODE—Appeal from.

See **Civil Procedure Code, Act X. of 1877, § 344.**

MUMTAZ HOSSEIN *v.* BRIJ MOHUN. **I. L. Rep. 4 Cal. 888.**

ORDER OF REMAND—Appeal from.

See **Appeal to Privy Council. 5.**

TETLEY *v.* JAI SHANKAR ... **I. L. Rep. 1 All. 726.**

ORDER REQUIRING SECURITY FROM GRANTEE OF CERTIFICATE TO COLLECT DEBTS—Appeal from.

See **Appeal—Civil. 16.**

RUKMANI.....**I. L. Rep. 1 All. 287.**

ORDER RETURNING PLAINT FOR PRESENTATION IN PROPER COURT, AFTER ADMISSION OF SUIT—Appeal from.

See **Appeal—Civil. 25.**

KALIAN DAS *v.* NAWAL SINGH ... **I. L. Rep 1 All. 620.**

ORDER AND DISPOSITION.

See **Insolvency. 3. 4. 5.**

ORDER ON RECEIVER TO SELL.

See **Receiver, Property in hands of.**

HEM CHUNDER *v.* PRANKRISTO ... **I. L. Rep. 1 Cal. 403.**

ORDER SENDING CASE TO MAGISTRATE FOR INQUIRY INTO OFFENCE OF GIVING FALSE EVIDENCE.

See **Criminal Procedure Code, Act X. of 1872, § 471. 2.**

REG. *v.* BAIJOO LALL .....**I. L. Rep. 1 Cal. 450.**

Digitized by Google

OTTI MORTGAGE.

See **Kanam Mortgage.**

KESHAVA *v.* KESHAVA.....**I. L. Rep. 2 Mad. 45.**

OUDH CIVIL COURTS ACT XXXII. OF 1871—§ 4—Finality of Decision of Court of First Appeal confirming Decision of Court of First Instance.

See **Appeal to the Privy Council. 2.**

THAKOOR HARDEO BUX *v.* THAKOOR JAWAHIR SINGH.....**L. Rep. 4 I. A. 178.**

OUDH PROCLAMATION IN 1858—*Sanad* granted by Government after Title under —Trust.

See **Act I. of 1869. 7.**

THAKUR SHERE BAHADUR *v* THAKURAIN DARIAO KUAR...**I. L. Rep. 3 Cal. 645.**

—— *Sanad*—Summary Settlement—Registered Talukdar may be Trustee.

See **Act I. of 1869. 2. 6.**

WIDOW OF SHANKAR SAHAI *v.* RAJAH KASHI PRASAD...**L. Rep. 4 I. A. 198, n.**

THAKOOR HARDEO BUX *v.* THAKOOR JAWAHIR SINGH ... **L. Rep. 4 I. A. 178; I. L. Rep. 3 Cal. 522.**

OUDH PROCLAMATION IN 1858, PARA. 8—*Mitakshara Law—Summary Settlement with one Member of Hindu Undivided Family—Hindu Will—Act I. of* 1869, §§ 2 and 16 *—Right of Alienation—Custom—Duty of Judge in giving Evidence in Suit before himself—Self-Acquisition.*] By the 8th paragraph of the Oudh Proclamation of 1858, it was declared that *C. L.* (then deceased), zemindar of Mourawan, and five other persons therein mentioned, were thenceforward the sole hereditary proprietors of the land, which they held when *Oudh* came under British rule, and which form part of the subject of these suits; and it was declared by the 9th paragraph, that with minor exceptions the proprietary right in the soil of the province was confiscated to the British Government. *C. L.* had died before the mutiny of 1857, but *G. S.*, one of his sons, was one of those who gave assistance and support to Government.

Summary settlements of the said lands were made with *G. S.* by the Government, between the 1st of April 1858 and the 10th of October 1859, and a talukdari *sanad* was granted to him on the 11th of December 1859 before the passing of Act I. of 1869, by which the Government bound itself to maintain him and his heirs as sole proprietors of the estate, and *G. S.* entered into a *kabooliyat* for the same.

G. S.'s name was not contained in the 2nd Schedule annexed to the Act (I. of 1869), but *C. L.*'s was.

By a document dated the 7th of February 1860, relating to property in the district of Oonao, and by other similar documents applicable to property in other districts, *G. S.* directed as follows:—"I have been requested by Government to submit an application on the subject of primogeniture, with a view that the talooka may not be split in pieces, as I would wish. Now, the custom that has been followed in my family for generations past is this—that the eldest member of the family continues to be the head, while the others remain obedient to him; but every one possesses a share in the talooka. Under the custom of the family, the other brothers are at liberty to have their share separated, should they wish it. The head has no power, under the old custom, to alienate the estate without consulting every sharer. I, therefore, wish that the old custom of maintaining the share of each shareholder should be preserved in opposition to the one in accordance with which one member of the family is allowed to succeed."

In suits for partition among the descendants of *C. L.* and of his brother, who together constituted a Hindu joint family, governed by the Mitakshara law, all the property the subject of the suits having been found to be the joint property of the said family, it was contended on behalf of the appellant in the first appeal that all the estates included in the *sanad* to their father, *G. S.*, and in the summary settlements, whether previously joint family property or not, became the separate self-acquired property of *G. S.*; that he was the sole malguzar thereof, and that he and his sons were the sole beneficial owners of it; and that he had no power to transfer it by will or by alienation *inter vivos*:—

Held, that as regarded the estates which were exempted from confiscation, the *sanad* and summary settlements were a mere grant by Government to one member of the family of property which belonged to the family jointly, and were not intended to enure to the sole benefit of the

Digitized by Google

OUDH PROCLAMATION IN 1858, PARA 8.—*contd.*

grantee, and could not of themselves affect the rights of the family. As regarded that part of the property granted to *G. S.*, which, if any, was not previously part of the family estates, it could not be held to have been the separate self-acquired property of *G. S.* within the meaning of the Hindu law. It was granted as a reward for loyalty, and for the support and assistance rendered to British officers,—services which could not have been rendered without the use of funds, which must be presumed to have been those of the joint family.

Held also, that even if any part of the property was self-acquired by *G. S.*, he had, by virtue of Act I. of 1869, acquired a permanent heritable and transferable right in the estates to which the suits related, being those which comprised the villages named in the lists attached to the kabooliyats, executed by him when the settlements of the different portions of the estates were made; and this as regards both the villages which were, and those, if any, which were not previously part of the family property; and that *G. S.* had power by will or by alienation in his lifetime to transfer the estates which, by virtue of the Act, were not merely heritable, but transferable, and that *G. S.* had transferred the same to the family. The document of the 7th February 1860, and the other similar documents, so far as they related to property in Oudh, amounted to a will within the definition of § 2 of Act I. of 1869; and the declaration contained in those documents of the wishes of *G. S.*, acted upon as it was by him and the other members of the family in his lifetime, coupled with certain other documents, was evidence sufficient to prove an alienation *inter vivos*, which in *G. S.*'s lifetime transferred the property to the family to be held by them as joint family property.

No special mode of transfer is required by Hindu law,—even a verbal transfer is sufficient.

Sections 16 to 19 of Act I. of 1869 have no retrospective effect.

Held also, upon the evidence, that neither by custom, usage, contract, nor any other means, had the property in dispute at any time become divisible upon partition in any other manner or in any other share than according to the rules of the Mitakshara, *i.e., per stirpes*.

A custom is a rule which in a particular family, or in a particular district, has from long usage obtained the force of law. It must be ancient,

OUDH PROCLAMATION IN 1858, PARA 8.—*contd.*

reasonable, and certain, and, being in derogation of the general rules of law, must be construed strictly.

A Judge cannot, without giving evidence as a witness, import into a case his own knowledge of particular facts. HURPURSHAD *v.* SHEO DYAL .. **L. Rep. 3 I. A. 259.**

OUDH TALOOKDARS RELIEF ACT XXIV. OF 1870—§ 10—*Appeal allowed though presented after the Prescribed Period.*] Case in which, having regard to exceptional circumstances and exceptional legislation, an appeal to the Commissioner of Division against a decision of a manager appointed under the *Oudh Talookdars Relief Act*, was *held* to have been rightly allowed, though preferred long after the period of six weeks prescribed by § 10. It appeared that the appellant in the Court below was a minor, and incapable of exercising his right of appeal except through the manager, who himself made the order appealed from, and that the respondents (present appellants) had after the expiration of the said six weeks themselves prayed for a judicial determination of substantially the same questions as were raised by the present appeal. RAMJISDAS *v.* RAJAH BHAGWAN BAX... **L. Rep. 5 I. A. 197, 1878.**

OUSTER WITHOUT AUTHORITY OF THE CIVIL COURT.

See **Criminal Procedure Code, Act X. of 1872, § 530. 3.**

MOHESH CHUNDER KHAN... **I. L. Rep. 4 Cal. 417.**

OUSTER OF MORTGAGEE IN POSSESSION IN EXECUTION OF DECREE AGAINST MORTGAGOR.

See **Civil Procedure Code, Act X. of 1877, § 332.**

SHAFI-UD-DIN *v.* LOCHAN SING... **I. L. Rep. 2 All. 94.**

OUSTER OF SECOND BY FIRST MORTGAGEE.

See **Dispossession of Second by First Mortgagee.**

NARAIN SINGH *v.* SHIMBOO SINGH. **L. Rep. 4 I. A. 15.**

Digitized by Google

OWNERSHIP OF SITE OF ROAD—*Presumption.*] There is nothing in this country which prevents the operation of the rule of law, that where a road has been for many years the boundary between two properties, and there is no evidence that the owner of either property gave up the whole of the land necessary for it, the site of the road must be presumed to belong to the adjoining proprietors, half to one and half to the other, up to the middle of the road. MOBARUCK SHAH *v.* TOOFANY. *Garth*, C. J., and *McDonnell*, J.....**I. L. Rep. 4 Cal. 206; 2 Cal. Rep. 446, 1878.**

OWNERSHIP IN SOIL WHEN GRANTED BY SANAD.

See **Construction of Sanad. 1.**

RAVJI *v.* DADAJI...**I. L. Rep. 1 Bom. 523.**

PANDARAM.

See **Mohunt. 1.**

RAJAH MUTTU RAMALINGA *v.* PERIANAYAGUM PILLAI...**L. Rep. 1 I. A. 209.**

PARDANASHIN WOMAN — *Right of — to be examined on Commission.*] A *pardanashin* woman summoned as a witness in a criminal case, has a right to be exempted from personal attendance at Court, and to be examined on commission. *In the matter of the Petition of* HURRO SOONDRY CHOWDERAIN...*Ainslie* and *Broughton*, JJ.....**I. L. Rep. 4 Cal. 20; 3 Cal. Rep. 93, 1878.**

2. —— *Deed by—Proof.*] Where a *pardanashin* lady, living apart from her relations and natural advisers, makes a deed of sale or gift in favour of a person who on some occasions has acted as her man of business, the strongest and most satisfactory proof must be given, by the person who claims under such a sale or gift, that the transaction was a real and *bonâ fide* one, and fully understood by the lady whose property is dealt with. TACOORDEEN TEWARRY *v.* NAWAB SYED ALI HOSSEIN KHAN...**L. Rep. 1 I. A. 192; 13 Beng. L. Rep. 427; 21 W. R. 340, 1874.**

S. C. under **Setting aside Deeds.**

3. —— *Execution of Documents.*] It is incumbent on the Court, when dealing with the disposition of property by a *pardanashin* woman, to be satisfied that the transaction was explained to her, and that she knew what she was doing; and especially so in a case where, without any legal assistance, for no consideration, and without any equivalent, she executes a document which deprives her of all her property.

The ordinary presumption that if a person of competent capacity signs a deed he understands the instrument to which he has affixed his name, does not arise in the case of a *pardanashin* woman who has no legal assistance. The decision of the High Court, that the endowment created by the document was not of such a public character as would sustain a suit under Act XX. of 1863, not dissented from. ASHGAR ALI *v.* DELROOS BANOO BEGUM.....**I. L. Rep. 3 Cal. 324, 1877, P. C.**

On appeal from **15 Beng. L. Rep. 167.**

PARDON—Illegal Tender of—to Accused Person—Evidence given on.

See **Evidence. 2. 3.**

REG. *v.* HANMANTA...**I. L. Rep. 1 Bom. 610.**

EMPRESS *v.* ASGHAR ALI.....**I. L. Rep. 2 All. 260.**

PAROL EVIDENCE — Consideration —to show that there was no Consideration for Written Agreement—or that Consideration was different from that stated.

See **Evidence. 20.**

HUKUMCHUND *v.* HIRALAL...**I. L. Rep. 3 Bom. 591.**

—— Of Contemporaneous Oral Agreement Inconsistent with Written Contract.

See **Evidence. 19.**

BANAPA *v.* SUNDARDAS.....**I. L. Rep. 1 Bom. 333.**

—— To prove *Payment of* a Bond containing a Stipulation that Receipts or Endorsement should be the only Evidence.

See **Bond to secure Balance of Account.**

NARRAYEN *v.* MOTILAL.....**I. L. Rep. 1 Bom. 45.**

—— Of Payment where Receipt Inadmissible because Unregistered.

See **Registration. 22.**

DALIP SING *v.* DURGA PRASAD...**I. L. Rep. 1 All. 442.**

Digitized by Google

PAROL REVOCATION OF HINDU WILL.

See **Act I. of 1869, § 22, Cl. 4.**

MAHARAJAH PERTAB NARAIN SINGH *v.* MAHARANEE SUBHOO KOOER...**L. Rep. 4 I. A. 228 ; I. L. Rep. 3 Cal. 626.**

PARSIS—Separate Property of Parsi Wife.

See **Married Woman's Separate Property. 1.**

DHANJIBHAI *v.* NAVAZBAI...**I. L. Rep. 2 Bom. 75.**

PARSI SUCCESSION ACT.

See **Act XXI. of 1865.**

PARTIES TO APPEAL — Power of Appellate Court to add

See **Power of Appellate Court.**

RANJIT SINGH *v.* SHEO PRASAD RAM.....**I. L. Rep. 2 All. 487.**

PARTIES TO SUIT—For Abuse.

See **Parties to Suit. 6.**

—— Advocate General.

See **Suit for Management of a Religious Endowment.**

PANCHCOWRIE MULL *v.* CHUMROOLALL...**I. L. Rep 3 Cal. 563.**

—— On Bill of Exchange or *Hundi*.

See **Procedure—Civil. 1.**

BASANT RAM *v.* KOLAHAL...**I. L. Rep. 1 All. 392.**

—— To Cancel Plaintiff's Signature to Composition Deed.

See **Parties to Suit. 2.**

—— Computation of Period of Limitation as to Added.

See **Assignment of Mortgage.**

GANPAT *v.* ADARJI...**I. L. Rep. 3 Bom. 312.**

See **Onus Probandi. 2.**

ABDUL *v.* MANJI.....**I. L. Rep. 1 Bom. 295.**

See **Co-Sharers of Land. 4.**

BOYDONATH *v.* GRISH CHUNDER... **I. L. Rep. 3 Cal. 26.**

PARTIES TO SUIT—*contd.*

—— By Co-Sharer for Separate Share of Rent —Colluding Co-Sharers.

See **Co-Sharers of Land. 3.**

JADU DASS *v.* SUTHERLAND...**I. L. Rep. 4 Cal. 556.**

—— By a Creditor of Deceased Mahomedan to enforce his Claim against the Estate.

See **Mahomedan Law. 1.**

ASSAMATHEM NESSA BIBI *v.* ROY LUCHMEPUT SINGH ... **I. L. Rep. 4 Cal. 142.**

—— For Defamation.

See **Parties to Suit. 6.**

—— Joinder of.

See **Civil Procedure Code, Act X. of 1877, § 32.**

MAHOMED BADSHA *v.* NICOL, FLEMING & Co...**I. L. Rep. 4 Cal. 355.**

—— For Maintenance by Illegitimate Son of Hindu.

See **Hindu Law—Maintenance of Illegitimate Son. 4.**

NARAYAN *v.* LAVING...**I. L. Rep. 2 Bom. 140.**

—— For Management of Religious Endowment —Advocate-General.

See **Suit for Management of Religious Endowment.**

PANCHCOWRIE MULL *v.* CHUMROOLALL.....**I. L. Rep. 3 Cal. 563.**

—— On Mortgage.

See **Parties to Suit. 1. 5.**

—— For Partition.

See **Parties to Suit. 3. 4.**

—— Partition Suit—Cultivating Ryots sought to be ejected should not be made.

See **Partition Suit. 1.**

SAMINDA PILLAI *v.* SUBBA REDDIAR. **I. L. Rep. 1 Mad. 333.**

—— Suit by One of several Co-Sharers of Land to eject Tenant.

See **Right of Occupancy. 5.**

BOLLYE SATEE *v.* AKRAM ALLY... **I. L. Rep. 4 Cal. 961.**

Digitized by Google

PARTIES TO SUIT—*contd.*

See **Co-Inamdars.**

KRISHNARAV *v.* GOVIND.....**I. L. Rep. 3 Bom. 25, n.**

—— Suit by Some of several Co-Sharers of Land for Enhancement of Rent.

See **Enhancement of Rent. 7. 9.**

DOORGA PROSAD MYTEE *v.* JOYNARAIN HAZRAH...**I. L. Rep. 2 Cal. 474.**

BALAJI *v.* GOPAL.....**I. L. Rep. 3 Bom. 23.**

See **Co-Sharers of Land. 4.**

BOYDONATH *v.* GRISH CHUNDER... **I. L. Rep. 3 Cal. 26.**

—— Suit by One of several Co-Sharers of Land for a Kabuliyat.

See **Co-Sharers of Land. 1.**

DOORGA PROSAD *v.* JOY NARAIN... **I. L. Rep. 4 Cal. 96.**

—— Suit by Co-Sharers of Land for Separate Share of Rent.

See **Civil Procedure Code, Act X. of 1877, § 32. 2.**

SHIB GOPAL *v.* BALDEV SAHAI... **I. L. Rep. 2 All. 264.**

See **Co-Sharers of Land. 1. 2. 3.**

DOORGA PROSAD *v.* JOY NARAIN... **I. L. Rep. 4 Cal. 96.**

AHAMUDIN *v.* GRISH CHUNDER... **Ibid. 350.**

JADU DASS *v.* SUTHERLAND...**Ibid. 556.**

See **Landlord and Tenant. 4.**

AMMODA *v.* KALLY...**I. L. Rep. 4 Cal. 89.**

—— For Specific Share by Member of Undivided Hindu Family.

See **Parties to Suit. 4.**

1.—— *To enforce a Mortgage.*] To a suit to enforce the hypothecation of property mortgaged, by a sale thereof, it is advisable for the creditor, though it is not incumbent on him, to make all subsequent incumbrancers parties, and if such subsequent incumbrancers should apply to be made parties, the Court should admit them, under § 73 of Act VIII. of 1859; and in passing a decree in such a suit to which the subsequent incumbrancers are made parties, the Court ought to give subsequent incumbrancers an opportunity to come in and redeem the prior incumbrance. *Per Turner*, J., in KHUB CHAND *v.* KALIAN DAS...**I. L. Rep. 1 All. 240, p. 245, 1876.**

S. C. under **Sale in Execution of Decree. 4.**

2. —— *Suit to cancel Plaintiffs' Signature to Composition Deed.*] In a suit by the plaintiffs praying that the signatures of their respective agents and managers to a certain deed, purporting to be a composition deed, whereby the property of the defendants was assigned to trustees for the benefit of the creditors of the defendants, might be cancelled, on the ground that the said signatures had been procured by misrepresentation, and that it might be declared that the said deed was not binding on the plaintiffs:—

Held, that the creditors of the defendants other than the plaintiffs were not necessary parties to the suit, the object of which was not to impeach the deed so far as other creditors were concerned. The property assigned by the deed would remain with the trustees for their benefit. THE ORIENTAL BANK CORPORATION *v.* JOHN FLEMING. *Sargent*, J....**I. L. Rep. 3 Bom. 242-253, 1879.**

3. —— *Partition Suit—Hindu Law.*] In a suit, after the father's death, for partition between brothers, the sons of different wives who are alive at the time when such suit is instituted, such wives are necessary parties to the suit, as they are entitled to share with their sons.

Cally Churn Mullick v. *Janova Dossee* (1 Ind. Jur., N. S., 284) followed. TORIT BHOOSUN BONNERJEE *v.* TARAPROSONNO BONNERJEE. *Pontifex*, J.....**I. L. Rep. 4 Cal. 756; 4 Cal. Rep. 161, 1879.**

See **Hindu Law—Partition. 4.**

JUGMOHUN *v* SARADAMOYEE...**I. L. Rep. 3 Cal. 149.**

4. —— *Hindu Law—Mitakshara—Undivided Family—Suit by one Member for Specific Share.*] To a suit by one member of a joint Hindu family, governed by the Mitakshara law for a specific share of the joint family property, all the members of the family are necessary parties. NATUNI MAHTON *v.* MUNRAJ MAHTON. *Garth*, C. J., and *Mitter*, J...**I. L. Rep. 2 Cal. 149, 1876.**

5. —— *Mortgage — Suit to enforce.*] It is not incumbent on a registered mortgagee seeking to enforce his lien, to search for sub-

Digitized by Google

PARTIES TO SUIT—*contd.*

sequent incumbrancers or purchasers, in order to make them parties to the suit. It lies on such subsequent incumbrancers or purchasers to inform him of the interest they have acquired, and in the absence of notice he would properly proceed against the person *primâ facie* liable to him. Mere registration of such subsequent sale or incumbrance will not supply the place of notice. S. B. SHRINGAPURE *v.* S. B. PETHE. *West* and *Pinhey*, JJ...**I. L. Rep. 2 Bom. 662, 1878.**

6. —— *Act VIII. of* 1859, § 73—*Slander—Abuse—Parties.*] The plaintiff sued the defendant for damages for loss of reputation caused by the false, abusive and defamatory statements made by the defendant concerning the plaintiff's sister.

The Court of first instance, regarding the suit as defective for want of parties, added the plaintiff's sister as a co-plaintiff under § 73 of Act VIII. of 1859.

Held, that assuming the suit to be maintainable, the right of suit was in the plaintiff's sister, and that the defect in the suit, as originally instituted, was not one which could be remedied under Act VIII. of 1859, § 73. When there is no right of suit in the plaintiff, the suit should be dismissed. SUBBAIYAR *v.* KRISTNAIYAR. *Morgan*, C.J., and *Innes*, J...**I. L. Rep. 1 Mad. 383, 1878.**

7. —— *Act VIII. of* 1859, § 73—*Adding Parties.*] Under § 73 of Act VIII. of 1859, a person is not liable to be added as a party to the suit, though he "may be likely to be effected by the result," unless he is also entitled to or claims some interest in, the subject-matter of the suit.

Where, therefore, the plaintiff instituted a suit against *A.*, for damages for breach of a contract for the delivery of wheat, and subsequently applied to amend his plaint by adding *B.* as a party defendant to the suit, on the ground that since the institution of the suit he had discovered that *B.* was a partner of *A.*, and *B.* and *A.* both denied the partnership, and alleged that the contracts were entered into by *A.* as agent and manager of *B.*:—

Held, that *B.* could not be made a party to the suit. If the plaintiff could make out a partnership between *A.* and *B.*, then, by virtue of the provisions of the Contract Act, he would be able to recover against *A.* If, on the other hand, *A.* was only an agent, then the plaintiff, having elected to sue the agent, had no right to be allowed to join *B.* as principal: that would be a different suit. KOEGLER *v.* PROSONNO COOMAR CHATTERJEE. *Kennedy*, J...**I. L. Rep. 2 Cal. 472, 1877.**

8. —— *Joinder of Parties—Appeal—Limitation—Procedure.*] It is competent to an Appellate Court to exercise its discretion in allowing a party to be added to the record after the period prescribed for the admission of an appeal has elapsed. THE COURT OF WARDS *v.* GAYA PERSAD. *Turner* and *Spankie*, JJ...**I. L. Rep. 2 All. 107, 1879.**

S. C. under **Sale in Execution of Decree. 16.**

9. —— *Non-Joinder of Parties—Partners—Amendment of Plaint.*] A suit was instituted by one only of the partners of a firm in respect of a cause of action which had accrued to all jointly. Notwithstanding that objection to the non-joinder of the other partners was duly taken, the plaintiff contented himself with putting in a petition on behalf of the other partners intimating their willingness that the suit should proceed in the sole name of the plaintiff, instead of applying to the Court to add the others partners as plaintiffs. In appeal, the High Court allowed the objection and dismissed the suit, refusing under the circumstances to allow the plaint to be amended by adding the other partners. DULAR CHAND *v.* BALRAM DAS. *Pearson* and *Turner*, JJ.....**I. L. Rep. 1 All. 453, 1877.**

PARTITION.

See **Hindu Law—Partition.**

—— Adopted Son—Share of—on.

See **Hindu Law—Partition. 11.**

RAGHUBANAND *v.* SADHU...**I. L. Rep. 4 Cal. 425.**

—— Of Ancestral Property does not alter its Ancestral Character.

See **Onus Probandi. 8.**

ADURMONI *v.* CHOWDHRY SIB NARAIN...**I. L. Rep. 3 Cal. 1.**

—— Burden of Proof of.

See **Onus Probandi. 4.**

VEDAVALLI *v.* NARAYANA...**I. L. Rep. 2 Mad. 19.**

Digitized by Google

PARTITION—*contd*

—— Co-Widows—Right of One of Two Co-Widows to enforce.

See **Hindu Law — Inheritance — Widow. 2.**

SRI GAJAPATHI NILAMANI *v.* SRI GAJAPATHI RADHAMANI...**L. Rep. 4 I. A. 212; I. L. Rep. 1 Mad. 290.**

—— Decree for—Execution of.

See **Execution of Decree. 11.**

RAJKOOMAREE *v.* GOPAL CHUNDER. **I. L. Rep. 3 Cal. 512.**

See **Decree for Partition.**

SHEIKH KHOORSHED *v.* NUBBEE FATIMA...**I. L. Rep. 3 Cal. 551.**

—— Evidence of.

See **Compromise. 2.**

PITAM SINGH *v.* UJAGAR SINGH... **I. L. Rep. 1 All. 651.**

—— Evidence of.

See **Hindu Law—Partition. 5. 6.**

AMBIKA DAT *v.* LUKHMANI KUAR. **I. L. Rep. 1 All. 437.**

PRAG DAS *v.* HARI KISHEN...**I. L. Rep. 1 All. 503.**

—— Impartible Zemindary—Transfer by Deed of Family Arrangement to Younger Brothers of Undivided Family—Succession of Widow thereto as Separate Estate.

See **Hindu Law — Separate Property.**

PERIASAMI *v.* PERIASAMI.....**L. Rep. 5 I. A. 61; S. C. I. L. Rep. 1 Mad. 312.**

—— Limitation to Suit for.

See **Hindu Law—Partition. 9.**

RUNJEET SINGH *v.* KOOER GUJRAJ SINGH...**L. Rep. 1 I. A. 9.**

See **Prescription. 1.**

SITARAM *v.* KHANDERAV...**I. L. Rep. 1 Bom. 286.**

—— Mother's Right to Share on—between Sons after Father's Death.

See **Parties to Suit. 2.**

TORIT BHOOSUN *v.* TARAPROSONNO...**I. L. Rep. 4 Cal. 756.**

PARTITION—*contd.*

See **Hindu Law—Maintenance of Widow. 3.**

LAKSHMAN *v.* SATYABHAMABAI... **I. L. Rep. 2 Bom. 494.**

—— Mother's Share on—Deceased Son.

See **Hindu Law—Partition. 4.**

JUGMOHUN *v.* SARODAMOYEE...**I. L. Rep. 3 Cal. 149.**

—— Among Narwadars.

See **Narwadari Village.**

VERIBHAI *v.* RAGHABHAI.....**I. L. Rep. 1 Bom. 225.**

—— Parties to Suit for.

See **Parties to Suit. 3. 4.**

TORIT BHOOSUN *v.* TARAPROSONNO. **I. L. Rep. 4 Cal. 756.**

NATHUNI *v.* MUNRAJ...**I. L. Rep. 2 Cal. 149.**

See **Partition Suit.**

——Of Pension in Lieu of *Saranjam*.

See **Saranjam.**

RAMCHANDRA *v.* LAKSHMAN...**I. L. Rep. 2 Bom. 346.**

——Of *Poojah Dalan*.

See **Execution of Decree. 11.**

RAJCOOMAREE *v.* GOPAL CHUNDER. **I. L. Rep. 3 Cal. 514.**

——Right to Demand—when there has been no—for Six or Seven Generations.

See **Hindu Law—Partition. 8.**

THAKUR DURRIAO SINGH *v.* THAKUR DAVI SINGH.....**L. Rep. 1 I. A. 1.**

——Right of Purchaser at Sale in Execution of Decree against Member of Undivided Hindu Family to enforce.

See **Hindu Law— Undivided Family. 3.**

DEENDOYAL LAL *v.* JUGDEEP NARAIN SINGH...**L. Rep. 4 I. A. 247; I. L. Rep. 3 Cal. 198.**

——Right of Sons to compel—of Ancestral Immoveable Property.

See **Hindu Law—Partition. 2. 13.**

KALI PARSHAD *v.* RAM CHARAN... **I. L. Rep. 1 All. 159.**

SURAJ BUNSI KOER *v.* SHEO PERSHAD SINGH...**L. Rep. 6 I. A. 88, 100.**

Digitized by Google

PARTITION—*contd.*

——Right of Widow to enforce.

See **Hindu Law—Partition. 8.**

SOUDAMONY *v.* JOGESH CHUNDER. **I. L. Rep. 2 Cal. 262.**

——Of *Saranjam.*

See **Saranjam.**

RAMCHANDRA *v.* LAKSHMAN...**I. L. Rep. 2 Bom. 346.**

——Share of an Adopted Son of a Natural Son on—in a Mitakshara Family.

See **Hindu Law—Partition. 11.**

RAGHUBANAND *v.* SADHU CHURN. **I. L. Rep. 4 Cal. 425.**

——Suit for Share, not in Form, for Partition—Decree of Share.

See **Hindu Law—Partition. 12.**

JOY NARAIN GIRI *v.* GIRISH CHUNDER MYTI...**I. L. Rep. 4 Cal. 434; L. Rep. 5 I. A. 228.**

—— Without Metes and Bounds—Intention to divide.

See **Hindu Law—Partition. 9. 14.**

BABOO DOORGA PERSHAD *v.* MUSSUMAT KUNDUN KOOWAR. **L. Rep. 1 I. A. 55.**

CHIDHAMBARAM CHETTIAR *v.* GAURI PACHIAR...**L. Rep. 6 I. A. 177; I. L. Rep. 2 Mad. 83.**

PARTITION BY BUTWARA.

See **Butwara.**

See **Mortgage. 9.**

BYJNATH LALL *v.* RAMOODEEN CHOWDRY...**L. Rep. 1. I. A. 106.**

See **Partition by the Revenue Authorities.**

PARTITION BY THE REVENUE AUTHORITIES — *Regulation XIX. of* 1814 — *Co-Sharers of Undivided Estate — Assignee of Co-Sharer, Rights of — Jurisdiction.*] The plaintiffs and defendants were co-sharers of an undivided estate. The plaintiffs, besides their shares as part owners, held some of the estate as tenants and some as purchasers from some of their co-sharers in the estate. The whole estate was partitioned under Reg. XIX. of 1814, and on such partition the lands which the plaintiffs held as tenants and as purchasers were allotted to the appellants, who were sharers other than those from whom the plaintiffs held or had purchased. In a suit by the plaintiffs for a declaration of their title to those lands, and for a re-distribution of the shares:—

Held, that the Civil Courts had no jurisdiction to interfere with the partition made by the revenue authorities.

Held also, that the principle laid down in *Byjnath Lall* v. *Ramoodeen Chowdry* (21 W. Rep. 233, S. C. L. Rep. 1 I. A. 106) that one co-sharer in a joint and undivided estate cannot deal with his share so as to affect the interests of other sharers, and that persons taking any security from one co-sharer do so subject to the right of the others to enforce partition: and that a mortgagee who takes such a security in the share of one co-sharer, who has no privity of contract with the other co-sharers, would have no recourse against the lands allotted to such co-sharers, but must pursue his remedy against the lands allotted to the mortgagor, is applicable to all assignees of any interest whatever, and governed this case; and that the plaintiffs' remedy lay, therefore, not against the appellants, but against the plaintiffs' assignors. SHARAT CHUNDER BURMON *v.* HURGOBINDO BURMON. *Mitter* and *Maclean*, JJ. **I. L. Rep. 4 Cal. 510, 1878.**

PARTITION DEED — Of Immoveable Property—Registration of.

See **Registration. 9.**

SHANKAR *v.* VISHNU...**I. L. Rep. 1 Bom. 67.**

—— Secondary Evidence of Unregistered.

See **Evidence. 18.**

KACHUBHAI *v.* KRISHNABHAI...**I. L. Rep. 2 Bom. 635.**

PARTITION SUIT—Parties to.

See **Parties to Suit. 3. 4.**

TORIT BHOOSUN *v.* TARAPROSONNO.....**I. L. Rep. 4 Cal. 756.**

NATHUNI *v.* MUNRAJ...**I. L. Rep. 2 Cal. 149.**

—— Right of Co-Sharer — to enforce Decree in.

See **Decree for Partition.**

SHEIKH KHOORSHED HOSSEIN *v.* NUBBEE FATIMA...**I. L. Rep. 3 Cal. 551.**

Digitized by Google

PARTITION SUIT—*contd.*

—— *Parties to Suit—Multifariousness—Ejectment of Cultivating Ryots.*] In a suit for partition of the joint *Inam* lands of a Hindu family, it was not disputed that the plaintiffs were entitled to the share they claimed, but the plaintiffs, alleging that the lands had been unauthorizedly leased on a perpetual lease by some of the co-sharers to a number of cultivating ryots, joined such ryots as defendants, seeking by their suit to eject them. The ryot defendants pleaded that separate suits should have been brought against them, as the lands had been reclaimed by their ancestors, and had been in the possession of the defendants and their forefathers ever since, and that they had acquired a permanent right of occupancy:—

Held, that though in a suit for partition and to recover shares in family property improperly alienated, it is proper to join the alienees as defendants, because every one of such alienees has an interest in the question whether the plaintiff is entitled to a share, yet, as a general rule, a suit for partition of family property is of little interest to the ryots, and the question of ejecting them is quite a distinct question in the case of each ryot; and therefore that the ryots had been improperly joined as defendants. Even if it appeared that the ryots had not a permanent tenure, they could not be ejected except upon notice at the end of the Fasli, as long as they paid the rent due on the lands. SAMINDA PILLAI *v.* SUBBA REDDIAR. *Kindersley* and *Tarrant*, JJ.....**I. L. Rep. 1 Mad. 333, 1877.**

PARTNERSHIP.

See **Illegal Contract.**

GAURI SHANKAR *v.* MUMTAZ ALI KHAN.**I. L. Rep. 2 All. 411.**

—— Association of Artizans for Acquisition of Gain.

See **Company. 1.**

BHIKAJI *v.* BAPU.....**I. L. Rep. 1 Bom. 550.**

—— Books—Production of.

See **Inspection. 1.**

HAJI JAKARIA *v.* HAJI CASIM... **I. L. Rep. 1 Bom. 496.**

—— Dissolution of—Right of Copartners to dissolve.

See **Compensation for Loss of Commission.**

PARTNERSHIP—*contd.*

COWASJI NANABHOY *v.* LALLUBHOY VULLUBHOY...**8 Bom. H. C. Rep. O. C. J. 209; I. L. Rep. 1 Bom. 468.**

—— Suit for Dissolution of—Jurisdiction.

See **Jurisdiction. 6.**

RAMASAMI *v.* THERUVENGADASAMI...**I. L. Rep. 1 Mad. 340.**

PAST COHABITATION — Not Immoral Consideration for Contract.

See **Contract. 4.**

MAN KUAR *v.* JASODHA KUAR... **I. L. Rep. 1 All. 478.**

PASTURE LAND—Right of Inamdar to Enclose.

See **Inamdar. 2.**

VISHVANATH *v.* MAHADAJI...**I. L. Rep. 3 Bom. 147.**

—— Village—Right to Graze Cattle.

See **Right of Free Pasturage.**

COLLECTOR OF THANA *v.* BAL PATIL.....**I. L Rep. 2 Bom. 110.**

PAT MARRIAGE.

See **Hindu Law — Inheritance — Illegitimate Son. 4. 5.**

RAHI *v.* GOVIND.....**I. L. Rep. 1 Bom. 97.**

NARAYAN *v.* LAVING...**I. L. Rep. 2 Bom. 140.**

See **Penal Code, § 494.**

REG. *v.* SAMBHU...**I. L. Rep. 1 Bom. 347.**

PATENT—Infringement of.

See **Infringement of Patent.**

SHEEN *v.* JOHNSON...**I. L. Rep. 2 All. 368.**

—— Infringement of—Limitation to Suit on account of Profits obtained by.

See **Limitation. 50.**

KINMOND *v.* JACKSON...**I. L. Rep. 3 Cal. 17.**

PATENT AMBIGUITY.

See **Registration. 28.**

RAJU *v.* KRISHNARAR...**I. L. Rep. 2 Bom. 273.**

Digitized by Google

PATIL—Eligibility for Office of—Suit for Declaration of.

See **Pensions Act XXIII. of 1871. 4.**

GURUSHIDGAVDA *v.* RUDRAGAVDATI.....**I. L. Rep. 1 Bom. 531.**

See **Declaratory Decree. 19. 20.**

NINDAN GAVDA *v.* MALAN GAVDA. **I. L. Rep. 1 Bom. 533, n.**

BABAJI *v.* NANA.....**I. L. Rep. 1 Bom. 535.**

PATILKI WATAN—Right to Share in—and officiate in Rotation.

See **Declaratory Decree. 19. 20.**

NINDAN GAVDA *v.* MALAN GAVDA. **I. L. Rep. 1 Bom. 533.**

BABAJI *v.* NANA.....**I. L. Rep. 1 Bom. 535.**

PATTA—Suit to compel Acceptance of—"Landholder."

See **Madras Act VIII. of 1865, § 1. 1.**

ZINULABDIN ROWTEN *v.* VIJIEN VIRAPATREN ... **I. L. Rep. 1 Mad. 49.**

—— Suit to enforce Acceptance of—will lie.

See **Suit to Enforce Acceptance of Patta.**

KARIM *v.* MUHAMMAD KADAR...**I. L. Rep. 2 Mad. 89.**

—— Suit to enforce Acceptance of—Tender of *Patta* necessary.

See **Madras Act VIII. of 1865, § 9. 1.**

SAYAD CHAND *v.* LAKSHMANA...**I. L. Rep. 1 Mad. 45.**

—— Tender of.

See **Madras Act VIII. of 1865, § 9. 1.**

SAYAD CHAND *v.* LAKSHMANA...**I. L. Rep. 1 Mad. 45.**

PATTAS AND MUCHALKAS, EXCHANGE OF.

See **Madras Act VIII. of 1865, § 4. 1.**

SESHADRI AYYANGAR *v.* SANDANAM...**I. L. Rep. 1 Mad. 146.**

PATTADAR RYOT—Right of.

See **Rights of Mirasdars.**

FAKIR MUHAMMAD *v.* TIRUMALA CHARIAR...**I. L. Rep. 1 Mad. 205.**

PATTIDARI ESTATE—Right of Pre-emption of Co-Sharer.

See **Pre-emption. 1. 2.**

FARZAND ALI *v.* ALIMULLAH...**I. L. Rep. 1 All. 272.**

NARAIN SINGH *v.* MUHAMMAD FARUCK...**I. L. Rep. 1 All. 277.**

PAUPER RESPONDENT—*Court Fees Act VII. of* 1870, § 16.] A pauper respondent is not entitled to present objections at the trial of an appeal without payment of stamp duty under the Court Fees Act VII. of 1870. Section 16 of that Act makes no exception in favour of pauper respondents. BABAJI HARI *v.* RAJARAM BALLAL. *West* and *N. Harridas*, JJ.....**I. L. Rep. 1 Bom. 75, 1875.**

PAUPER SUIT.

See **Petition for Leave to Sue in forma Pauperis, and Suit in forma Pauperis.**

—— Court Fees—Prerogative of the Crown.

See **Civil Procedure Code, Act VIII. of 1859, § 309. 1. 2.**

GUNPUT PUTAYA *v.* COLLECTOR OF KANARA...**I. L. Rep. 1 Bom. 7.**

GULZARI LAL *v.* COLLECTOR OF BAREILLY...**I. L. Rep. 1 All. 596.**

—— Court Fees—Prerogative Right of Crown to Execution Sale Proceeds of Defendant's Property.

See **Prerogative of the Crown.**

COLLECTOR OF MORADABAD *v.* MUHAMMAD DAIM KHAN...**I. L. Rep. 2 All. 196.**

—— Suit Commenced as—but continued in Ordinary Form—Computation of Limitation.

See **Limitation. 37.**

CHUNDER MOHUN *v.* BHUBON MOHINI...**I. L. Rep. 2 Cal. 389.**

Digitized by Google

PAUPER SUIT—*contd.*

See **Petition for Leave to Sue in Forma Pauperis. 1. 2.**

SKINNER *v.* ORDE...**I. L. Rep. 1 All. 230; L. Rep. 6 I. A. 126.**

—— Suit Commenced in Ordinary Form, continued as.

See **Suit in Forma Pauperis. 1.**

NIRMAL *v.* DOYAL NATH.....**I. L. Rep. 2 Cal. 180.**

PAYMENTS—Appropriation of—Guarantee.

See **Appropriation of Payments.**

NICHOLLS *v.* WILSON...**I. L. Rep. 4 Cal. 560.**

—— Cheque—Tender of.

See **Tender. 1.**

BOYLE CHUND SINGH *v.* MAULARD. **I. L. Rep. 4 Cal. 572.**

—— Parol Evidence of—where Receipt Inadmissible because Unregistered.

See **Registration. 22.**

DALIP SINGH *v.* DURGA PRASAD... **I. L. Rep. 1 All. 442.**

—— Parol Evidence of—contrary to Stipulation in Bond that Receipts or Indorsements should be the only Evidence.

See **Bond to secure Balance of Account.**

NARAYAN *v.* MOTILAL...**I. L. Rep. 1 Bom. 45.**

—— Plea of—on Suit on *Hundi*.

See **Onus Probandi. 2.**

ABDUL KARIM *v.* MANJI HANSRAJ. **I. L. Rep. 1 Bom. 295.**

—— Stipulation in Bond as to Mode of Proof of.

See **Bond to secure Balance of Account.**

NARAYAN *v.* MOTILAL...**I. L. Rep. 1 Bom. 45.**

PAYMENT INTO COURT—Suit for Arrears of Rent—Limitation.

See **Bengal Act VIII. of 1869, § 31.**

RAM SUNKER *v.* BIR CHUNDER ..**I. L. Rep. 4 Cal. 714.**

PAYMENT OF INTEREST—Revival of Right to sue by.

See **Limitation. 43. 44. 45.**

VALIA TAMBURATTI *v.* VIRA RAYAN. **I. L. Rep. 1 Mad. 228.**

TEGARAYA *v.* MARIPPA...**Ibid. 264.**

HANMANTLAL *v.* RAMABHAI...**I. L. Rep. 3 Bom. 198.**

PAYMENT OF TIME-BARRED DEBT BY ADMINISTRATOR-GENERAL.

See **Time-barred Debt. 1.**

ADMINISTRATOR-GENERAL *v.* HAWKINS...**I. L. Rep. 1 Mad. 267.**

PAYMENT OF TIME-BARRED DEBT BY HINDU WIDOW.

See **Hindu Law—Alienation by Widow. 5.**

BHALU *v.* PARBHU...**I. L. Rep. 2 Bom. 67-71.**

PAYMENTS BY USUFRUCTUARY MORTGAGEE ON ACCOUNT OF ENHANCED REVENUE—Suit to recover—During Currency of Mortgage Tenure.

See **Mortgage. 41.**

NIKKAMAL *v.* SULAIMAN SHEIKH GARDNER...**I. L. Rep. 2 All. 193.**

PEACEFUL POSSESSION.

See **Criminal Procedure Code, Act X. of 1872, § 530. 3.**

MOHESH CHUNDER KHAN...**I. L. Rep. 4 Cal. 417.**

PENAL CODE—§ 21—Prosecutor appointed by Government Solicitor.

See **Public Servant. 1.**

EMPRESS *v.* BUTTO KRISTO DOSS... **I. L. Rep. 3 Cal 497.**

—— § 21—Public Servant—Municipal Corporation

See **Municpal Commissioner. 1.**

EMPRESS *v.* MUNICIPAL CORPORATION OF CALCUTTA...**I. L. Rep. 3 Cal. 758.**

—— § 21, Cl. 9—*Public Servant—Illegal Gratification.*] The manager of a Court of Wards estate paid into a bank, carrying on the trea-

Digitized by Google

PENAL CODE—*contd.*

sury business of the Government, a sum of money on behalf of Government. *B.*, a *poddar* in the bank, demanded and took a reward for his trouble in receiving the money. On *B.* being prosecuted and charged under § 161 of the Penal Code:—*Held*, that although the money might have been paid on account of Government, it was on behalf of the bank, and not of Government, that the money was received by the accused; and that the poddar was a servant of the bank only, and not a public servant within the meaning of § 21, Cl. 9, of the Penal Code. *In the matter of the Petition of* MODUN MOHUN. *Ainslie* and *Broughton*, JJ....**I. L. Rep. 4 Cal. 376, 1878.**

—— § 52.

See **Defamation. 1.**

SIBHO PROSAD PANDAH.....**I. L. Rep. 4 Cal. 124.**

—— § 59—*Offence punishable with Transportation for Life or Imprisonment for Term of Years.*] A sentence of transportation for a period less than life can only be passed under the provisions of § 59 of the Penal Code, and consequently, when an offence is punishable either with transportation for life or imprisonment for a term of years, if a sentence of transportation for a term less than life is awarded, such term cannot exceed the term of imprisonment to which the offender is liable. REG. *v.* NAIDA...**I. L. Rep. 1 All. 43, 1875, F. B.**

—— §§ 64, 65.

See **Criminal Procedure Code, Act X. of 1872, § 309. 2.**

EMPRESS *v.* DARBA...**I. L. Rep. 1 All. 461.**

—— § 75—*Previous Conviction—Sentence.*] On the 22nd of January 1878, *M.* was convicted, under §§ 109 and 328 of the Penal Code, of abetting the administering to one *K.* of a stupefying drug with intent to commit theft. In addition to the offence of which he was convicted he was charged with theft, under § 379 of the Penal Code. On the 29th of January 1878, he was convicted, under § 328 of the Penal Code, of administering to one *A.* a stupefying drug with intent to commit theft, and also, under § 379, of theft:—

Held that, though it had been shown that *M.* had, a few days before the trial of the latter offence, been convicted, it had not been shown that he had been convicted of one of the offences mentioned in § 75 of the Penal Code, nor that he had been convicted of any offence before the commission of the latter offence, and therefore that he was not liable on conviction of the second offence to the enhanced punishment provided by § 75 of the Penal Code. EMPRESS *v.* MEGHA. *Turner*, J...**I. L. Rep. 1 All. 637, 1878.**

—— § 99—Right of Self-Defence of Property against Mischief.

See **Land held by Joint Owners.**

EMPRESS *v.* RAJCOOMAR SINGH... **I. L. Rep. 3 Cal. 573.**

—— § 108, Expl. 2-4.

See **Abetment. 3.**

EMPRESS *v.* TROYLUKHO NATH CHOWDHRY.....**I. L. Rep. 4 Cal. 366.**

—— § 109.

See **Jurisdiction. 16a.**

EMPRESS *v.* LACHMAN SINGH... **I. L. Rep. 2 All. 398.**

—— § 109—Abetment—Bigamy.

See **Abetment. 2.**

EMPRESS *v.* ABDOOL KARIM...**I. L. Rep. 4 Cal. 10.**

—— § 116—Abetment of Kidnapping.

See **Abetment. 4.**

REG. *v.* SAMIA KAUNDAN...**I. L. Rep. 1 Mad. 173.**

—— §§ 141-147—Riot.

See **Land held by Joint Owners.**

EMPRESS *v.* RAJCOOMAR SINGH... **I. L. Rep. 3 Cal. 573.**

—— § 143.

See **Summary Procedure.**

EMPRESS *v.* ABDOOL KARIM...**I. L. Rep. 4 Cal. 18.**

—— § 144.

See **Summary Procedure.**

EMPRESS *v.* ABDOOL KARIM . **I. L. Rep. 4 Cal. 18.**

—— § 161—Acceptance of "*Dasturi.*"

See § 165, *post.*

EMPRESS *v.* KAMPTA PRASAD... **I. L. Rep. 1 All. 530.**

—— § 165—Attempt to obtain Illegal Gratification.

See **Attempt. 2.**

EMPRESS *v.* BALDEO SAHAI...**I. L. Rep. 2 All. 253.**

Digitized by Google

PENAL CODE—*contd.*

1.—— § 165 — § 161 — *Public Servant—Illegal Gratification—Acceptance of Present.*] *K.*, a police officer employed in a Criminal Court to read the diaries of cases investigated by the police, and to bring up in order each case for trial with the accused and witnesses, after a case of theft had been decided by the Court in which the persons accused were convicted, and a sum of money, Rs. 3, the proceeds of the theft, had been made over to the prosecutor by order of the Court, asked for and received from the prosecutor a portion of that money, *viz.*, Re. 1, not as a motive or reward for any of the objects described in § 161 of the Penal Code, but as *dasturi* :—

Held, that *K.* was, under the circumstances, punishable under § 165, and not under § 161, of the Penal Code.

Per Stuart, C.J.—In determining whether the thing received is a "valuable thing" within the meaning of § 165, the value must be looked at with reference to the proportion it bears to the money or property of which it forms a part. EMPRESS *v.* KAMPTA PRASAD. *Stuart*, C.J., and *Spankie*, J.....**I. L. Rep. 1 All. 530, 1877.**

——§ 173—*Refusal to give Receipt for Summons.*] A refusal to give a receipt for a summons does not constitute an offence under § 173 of the Penal Code. *Reg.* v. *Kalya bin Fakir* (5 Bom. H. C. Rep. Cr. Ca. 34) followed. *In the matter of* BHOOBUNESHWAR DUTT. *Markby* and *Mitter*, JJ.....**I. L. Rep. 3 Cal. 621 ; 2 Cal. Rep. 80, 1877.**

——§ 174.

See **Criminal Procedure Code, Act X. of 1872, § 473. 4.**

EMPRESS *v.* SUKHARI...**I. L. Rep. 2 All. 405.**

——§ 176—Omission to give Information to the Police.

See **Criminal Procedure Code, Act X. of 1872, § 90. 1. 2.**

EMPRESS *v.* ACHIRAJ LALL.. **I. L Rep. 4 Cal. 603.**

EMPRESS *v.* SASHI BHUSAN CHUCKRABUTTY.....**Ibid. 623.**

——§ 188—Beng. Reg. VI. of 1819, § 6—Disobedience of Order of Magistrate not to ply Boats near Public Ferry.

See **Disobedience of Order of Public Servant.**

MUTHRA *v.* JAWAHIR...**I. L. Rep. 1 All. 527.**

PENAL CODE—*contd.*

——§§ 192, 193.

See **Conviction on Several Charges. 2.**

EMPRESS *v.* RAMESHAR RAI ... **I. L. Rep. 1 All. 379.**

——§ 193.

See **Jurisdiction. 16a.**

EMPRESS *v.* LACHMAN SINGH...**I. L. Rep. 2 All. 398.**

—— § 193—Attempt—Abetment.

See **Fabricating False Evidence. 1.**

EMPRESS *v.* MULA...**I. L. Rep. 2 All. 105.**

—— § 211.

See **Jurisdiction. 16a.**

EMPRESS *v.* LACHMAN SINGH...**I. L. Rep. 2 All. 398.**

1.——§ 211—*False Charge.*] To constitute the offence of making a false charge, under § 211 of the Penal Code, it is enough that the false charge is made, though no prosecution is instituted thereon. *Reg.* v. *Subbhana Gaundan.* (1 Mad. H. C. Rep. 30) followed. EMPRESS *v.* ABUL HASAN. *Turner* and *Spankie*, JJ...**I. L. Rep. 1 All. 497, 1877.**

2.——§ 211—*False Charge.*] To constitute the offence of making a false charge under § 211 of the Penal Code, it is enough that the false charge is made, and that the charge is not pending at the time of the offender's trial. *Reg.* v. *Subbhana Gaundan* (1 Mad. H. C. Rep. 30) followed. EMPRESS *v.* SALIK.....**I. L. Rep. 1 All. 527.**

—— § 214.

See the Cases collected under **Compounding Offences.**

—— § 217—Vagueness of Charge.

See **Charge. 1.**

IMPX. *v.* BABAN.....**I. L. Rep. 2 Bom. 142.**

1.——§ 217—*Evidence that an Offence has been committed.*] It is sufficient for the purpose of a conviction under § 217 of the Penal Code, that the accused has knowingly disobeyed any direction of the law as to the way in which he is to conduct himself as a public servant, and that he should have done this with the intention of saving a person from legal punishment, and it is not further necessary to show that in point of fact the person so intended to be saved had

Digitized by Google

PENAL CODE—*contd.*

committed an offence, or was justly liable to legal punishment. A public servant charged under that section is equally liable to be punished, although the intention which he had of saving any person from legal punishment was founded on a mistaken belief as to that person's liability to punishment. EMPRESS *v.* AMIRUDDEEN. *Jackson* and *Cunningham*, JJ.....**I. L. Rep. 3 Cal. 412 ; 1 Cal. Rep. 483, 1878.**

2.——§ 217—*Act X. of* 1872, § 90—*Village Accountant — Village Munsiff's Peon — Disobedience of Direction of Law.*] Where a village accountant and a village Munsiff's peon were convicted, under § 217 of the Penal Code, of having disobeyed the direction of law contained in § 90 of Act X. of 1872, by hushing up a charge of theft :—

Held, that the conviction was illegal as the accused did not bear the character which raised the obligation under the latter section.

The direction of law mentioned in § 217 of the Penal Code, means a positive direction of law, such as those contained in §§ 89 and 90 of Act X. of 1872, and cannot be made to extend to the more general obligation by which every subject is bound not to stifle a criminal charge. *In the matter of* RAMINIHI NAYAR. *Innes* and *Kernan*, JJ.....**I. L.Rep. 1 Mad. 266, 1877.**

—— § 277 —*Public Spring — Reservoir.*] The words "public spring or reservoir" used in § 277 of the Penal Code do not include a public river. The strewing branches in a public river for fishing purposes *held*, therefore, to be no offence under that section. EMPRESS *v.* HALODHUR PAROE. *Markby* and *Prinsep*, JJ...**I. L. Rep. 2 Cal. 383, 1877.**

—— §§ 292 and 294—Charge should be specific.

See **Charge. 2.**

REG. *v.* UPENDRONATH DOSS ..**I. L. Rep. 1. Cal. 356.**

—— §§ 299, 300.

See **Murder. 2.**

REG. *v.* GOVINDA...**I. L. Rep. 1 Bom. 342.**

—— § 304.

See **Conviction on Several Charges. 3.**

EMPRESS *v.* BANNI...**I. L. Rep. 2 All. 349.**

PENAL CODE—*contd.*

—— § 304—*Culpable Homicide not amounting to Murder.*] In order to a conviction under a charge of culpable homicide not amounting to murder, the prosecutor must prove that the assault or blow which caused death, was committed or inflicted so recklessly as to show that the offender was utterly regardless of the consequences. *Per Stuart*, C. J., in EMPRESS *v.* FOX.....**I. L. Rep. 2 All. 522, 524, 1879.**

See also **Culpable Homicide not Amounting to Murder** and **Murder. 2.**

S. C. under **Voluntarily Causing Hurt.**

—— §§ 304 and 304*a*.

See **Culpable Homicide.**

EMPRESS *v.* KETABDI MUNDUL...**I. L. Rep. 4 Cal. 764.**

1.—— § 304*a*—*Culpable Homicide.*] In the course of a dispute as to the amount of hire due to the deceased, the accused gave him a severe push on the back, which caused the deceased to fall from the top of the accused's steps to the road below, a distance of 2½ cubits. In falling, the deceased fractured his big toe, and five days after died from tetanus brought on by the fracture :—

Held, that the accused was not guilty of an offence under § 304*a* of the Penal Code, nor of culpable homicide not amounting to murder, because there was no likelihood of the result following, and, *a fortiori*, no designed causing of it. It was simply a case of using criminal force. REG. *v.* ACHARJYS. *Holloway* and *Innes*, JJ.....**I. L. Rep. 1 Mad. 224 1877.**

2. —— § 304*a*—*Culpable Homicide—Doing Rash and Negligent Act.*] Where an accused was charged with culpable homicide, and the evidence showed that the deceased had an enlarged spleen, and that his death was caused by rupture of the spleen occasioned by blows inflicted by the accused on the body of the deceased :—*Held*, that it was not sufficient, in order to find the accused guilty of a rash act under § 304*a* of the Penal Code, that the jury should be satisfied only of the prevalence of the disease of enlargement of the spleen in the district, and infer therefrom criminal rashness in beating the accused ; but that they should be satisfied also that the accused was aware of the prevalence of the disease in the district, and also aware of the

Digitized by Google

PENAL CODE—*contd.*

risk to life involved from striking on the trunk of the body a person who might be suffering from disease of the spleen. EMPRESS *v.* SAFATULLA. *Morris* and *White*, JJ.....**I. L. Rep. 4 Cal. 815, 1879.**

—— § 317.

See **Conviction on Several Charges. 3.**

EMPRESS *v.* BANNI...**I. L. Rep. 2 All. 349.**

—— §§ 321, 322—Woman with Infant in Arms—Blow aimed at Woman, causing Death of Infant.

See **Grievous Hurt. 1.**

EMPRESS *v.* SAHAE RAE.....**I. L. Rep. 3 Cal. 623.**

—— § 323.

See **Voluntarily Causing Hurt.**

EMPRESS *v.* FOX.....**I. L. Rep. 2 All. 522.**

—— §§ 336, 337, 338.

See **Culpable Homicide.**

EMPRESS *v.* KETABDI MUNDUL...**I. L. Rep. 4 Cal. 764.**

—— § 361.

See **Kidnapping.**

EMPRESS *v.* MUSADBAKSH...**I. L. Rep. 3 Bom. 178.**

—— § 363.

See **Abetment. 4.**

REG. *v.* SAMIA KAUNDAN...**I. L. Rep. 1 Mad. 173.**

—— § 372—*Disposing of Minor Girl for purposes of Prostitution—Transfer of Possession or Control over Minor's Person.*] *Held*, that the dedication by a father of his minor daughter under the age of 16 years to the services of a Hindu pagoda, by getting her made into a Dasi by the tying of the *bottu* and performance of other ceremonies, where it was shown that Dasis universally get their living by prostitution, and that her father knew that his daughter was likely to be employed for prostitution, was a disposing of such minor knowing it to be likely that she would be used for prostitution, within the meaning of § 372 of the Penal Code, notwithstanding that such minor continued to reside with her father after such dedication; a disposal tantamount to a transfer of possession or control over the minor's person not being necessary to constitute an offence under that section. REG. *v.* ARUNA CHELLAM. *Morgan*, C.J., and *Innes*, J.....**I. L. Rep. 1 Mad. 164, 1876.**

See CHENNA UMMAYI *v.* TEGARA CHETTI. **Ibid. 168.**

Under **Immoral Custom.**

—— § 378, Expl. 5—Removal of Goods with Criminal Intent, but with Owner's Permission.

See **Abetment. 3.**

EMPRESS *v.* TROYLUKHO NATH CHOWDHRY...**I. L. Rep. 4. Cal. 366.**

—— § 414.

See **Conviction on Several Charges. 2.**

EMPRESS *v.* RAMESHAR RAI...**I. L. Rep. 1 All. 379.**

—— § 425.

See **Criminal Trespass. 4.**

EMPRESS *v.* BUDH SINGH...**I. L. Rep. 2 All. 101.**

—— § 425.

See **Land held by Joint Owners.**

EMPRESS *v.* RAJCOOMAR SINGH... **I. L. Rep. 3 Cal. 573.**

—— § 430—*Causing Diminution of Water Supply.*] It is not part of the definition of the offence of causing a diminution of water-supply for agricultural purposes, that the act of the accused should be, in common language, a mere wanton act of waste.

It is sufficient that the act is done without any sort of right, and it matters not that the person doing it sets up such a right, if the facts are so clear that the claim is manifestly only an additional wrong. RAMA KRISHNA CHETTI *v.* PALANIYANDI KUDAMBAR...**I. L. Rep. 1 Mad. 262, 1876, F. B.**

[The head-note represents *Innes*, J., as dissenting, but this does not appear in the body of the report, nor are the reasons for the dissent stated.]

—— § 441—Claim of Right.

See **Criminal Trespass. 4. 5.**

EMPRESS *v.* BUDH SINGH...**I. L. Rep. 2 All. 101.**

GOBIND PRASAD.....**I. L. Rep. 2 All. 465.**

Digitized by Google

PENAL CODE—*contd.*

—— § 441—Public Ferry—Plying Boats near.

See **Criminal Trespass. 2.**

MUTHRA *v.* JAWAHIR...**I. L. Rep. 1 All. 527.**

—— § 447—Entry on Prosecutor's Land in Pursuit of Wounded Deer.

See **Criminal Trespass. 1.**

CHUNDER NARAIN *v.* FARQUHARSON ..**I. L. Rep. 4 Cal. 837.**

—— § 447—Infringement of Exclusive Right of Fishing in a Public River.

See **Criminal Trespass. 3.**

EMPRESS *v.* CHARN NAYIAH...**I. L. Rep. 2 Cal. 354.**

—— § 494— Adultery — Compounding — after Conviction.

See **Compounding Offences. 8.**

EMPRESS *v.* THOMPSON.....**I. L. Rep. 2 All. 339.**

—— § 494—Bigamy—Abetment of.

See **Abetment. 2.**

EMPRESS *v.* ABDOOL KURREEM .. **I. L. Rep. 4 Cal. 10.**

—— § 494—Natra Marriage.

See **Hindu Law — Inheritance—Illegitimate Son. 4. 5.**

RAHI *v.* GOVIND.....**I. L. Rep. 1 Bom. 97.**

NARRAYAN *v.* LAVING...**I. L. Rep. 2 Bom. 140.**

—— § 494—*Bigamy — Authority of Caste to declare a Marriage Void.*] Courts of law will not recognize the authority of a caste to declare a marriage void, or to give permission to a woman to remarry during the lifetime of her husband who has not given his consent thereto. *Bonâ fide* belief that the consent of the caste made the second marriage valid does not constitute a defence to a charge, under § 494 of the Penal Code, of marrying again during the lifetime of the first husband, or to a charge of abetment of that offence, under that section combined with § 109. REG. *v.* SAMBHU RAGHU. *Melvill* and *N. Harridas*, JJ.....**I. L. Rep. 1 Bom. 347, 1867.**

—— § 499—Exceptions.

See **Defamation. 1.**

SIBHO PROSAD PANDHA.....**I. L. Rep. 4 Cal. 124.**

PENAL CODE—*contd.*

—— §§ 503, 506.

See **Criminal Procedure Code, Act X of 1872, § 489.**

EMPRESS *v.* RAGHUBA ..**I. L. Rep. 2 All. 351.**

—— § 511.

See **Attempt. 1.**

REG. *v.* PETERSON...**I. L. Rep. 1 All. 316.**

—— Attempt to obtain Bribe.

See **Attempt. 2.**

EMPRESS *v.* BALDEO SAHAI ..**I. L. Rep. 2 All. 253.**

—— Attempt—Abetment.

See **Fabricating False Evidence. 1.**

EMPRESS *v.* MULA...**I. L. Rep. 2 All. 105.**

PENALTY.

See **Contract. 12.**

MACKINTOSH *v.* HUNT...**I. L. Rep. 2 Cal. 202.**

—— On Insufficiently Stamped *Hundi*—Evidence—Admissibility.

See **Stamp. 8.**

MOTHOORA MOHUN *v.* PEARY MOHUN...**I. L. Rep. 4 Cal. 259.**

—— Mitigation of—of Forfeited Recognizance Bond.

See **Recognizance.**

EMPRESS *v.* NURUL HUQQ...**I. L. Rep. 3 Cal. 757.**

—— Tender of.

See **Stamp Duty. 1.**

CHAMPABATTY *v.* BIBI JIBUN ..**I. L. Rep. 4 Cal. 213.**

PENSION—In lieu of *Saranjam.*

See **Saranjam.**

RAMCHANDRA *v.* SAKHARAM...**I. L. Rep. 2 Bom. 346.**

PENSIONS ACT XXIII. OF 1871.

See **Saranjam.**

RAMCHANDRA *v.* SAKHARAM...**I. L. Rep. 2 Bom. 346.**

1. —— The Pensions Act XXIII. of 1871 is not retrospective. JAMNADAS *v.* LALITRAM. *Westropp*, C.J., and *Melvill*, J.....**I. L. Rep. 2 Bom. 294.**

Digitized by Google

PENSIONS ACT XXIII. OF 1871—*contd.*

2. —— §§ 3 to 6.—Tora Garas Haks.] *Tora Garas Haks* are within the scope of the Pensions Act XXIII. of 1871, and a suit in respect of them cannot be instituted without the certificate required by § 6.

But the Act was not intended to be retrospective, or to affect any suit instituted before the date of its coming into force.

Where, therefore, a mortgagee of such *hak* had, before the passing of the Act, obtained a decree for the recovery of the mortgage debt from the mortgaged *haks* and from the mortgagor personally, and a fresh suit was necessary to enforce execution of that decree against those *haks* :—

Held, that the Act did not apply to such fresh suits.

Semble, the word "right" in § 3 is equivalent to the word *hak* in its restricted sense of allowance or fee. PARBHUDAS RAYAJI *v.* MOTIRAM KALIANDAS. *Melvill* and *Kemball*, JJ...**I. L. Rep. 1 Bom. 203, 1876.**

3. —— §§ 3, 4 and 6—*Grant of Proprietorship in Soil—Jurisdiction.*] An enactment of so arbitrary a character as Act XXIII. of 1871, which purports to deprive the subject of his right to resort to the ordinary Courts of Justice for relief in certain cases, ought to be strictly construed, and the Courts should not extend its operation further than the language of the Legislature requires.

The meaning of the expression " grant of money or land revenue" in § 4, though declared by § 3 to include " anything payable on the part of Government in respect of any right, privilege, perquisite, or office," is not of so wide a range as to include a grant of the proprietorship of the soil, or any suit involving the rights of a proprietor of the soil. RAVJI MANDLIK *v.* DADAJI DESAI. *Westropp*, C. J., and *Larpent*, J. **I. L. Rep. 1 Bom. 523, 1875.**

4. —— §§ 3, 4 and 6—*Suit for Declaration of Eligibility to officiate as Patil.*] A suit for a declaration of the plaintiff's eligibility to officiate as Patil is not prohibited by Act XXIII. of 1871. That Act should receive a strict construction, as being in derogation of the right of the subject to resort to the ordinary Civil Courts. GURUSHIDGAUDA RUDRAGAVDA *v.* RUDRAGAVDATI. *Westropp*, C. J., and *N. Harridas*, J.....**I. L. Rep. 1 Bom. 531, 1877.**

PENSIONS ACT XXIII. OF 1871—*contd.*

5. —— § 4—*Certificate by Collector—Lands held free of Assessment.*] Section 4 of the Pensions Act XXIII. of 1871 debars the Civil Court from taking cognizance of any suit, whether the Government is a party to it or not, which relates to any pension, or grant of money or land revenue, conferred or made by the British or any former Government, without a certificate from the Collector or other authorized officer. Section 5 provides a remedy for the claimant of such pension or grant, and § 6 enables the revenue officer to refer the parties to the Civil Courts for the determination of their respective interests in the income or other benefit, which the executive will still, as against either or both of the litigants, be at liberty to withhold. Lands held free of assessment under a grant from Government, which bestows on the grantee the lands themselves, and not merely the Government revenue arising from them, do not fall within the provisions of the Pensions Act. BABAJI HARI *v.* BALLAL. *West* and *N. Harridas*, JJ...**I. L. Rep. 1 Bom. 75, 1875.**

6. —— § 4 — *Jurisdiction* — Deshmukhi Haks.] The plaintiff, alleging that, as hereditary *Deshmukh* of certain Mahals in the Ratnagiri District, he was entitled to levy from the ryots of those Mahals a percentage on the revenue assessed, and that this due had been latterly received by Government on behalf of the *Deshmukh*, sued to recover a portion of those dues so collected, but withheld from him, by Government.

The rights which the plaintiff sought to establish were set forth in a *sanad* granted in 1777, which — after reciting that the *Deshmukhi Watan* included a right to levy directly from the ryot a certain percentage on the revenue assessed, and that this right had been suspended for a considerable number of years, and the *haks* resumed and treated as part of the general revenue, certain fixed salaries being paid to the *Deshmukhs*, in accordance with the petition of the plaintiff's ancestors—ordered that the *haks* "should be released to be levied by them directly from the ryots in accordance with the *jamabandi*."

The dues accordingly were so levied by the plaintiff's ancestors and himself at different rates, according as the revenue was assessed in cash or grain, till 1842, after which the Government officials collected them with the regular revenue, and paid them to the plaintiff.

On the new revenue assessment coming into force in 1866, when a consolidated cash assess-

Digitized by Google

PENSIONS ACT XXIII. OF 1871—*contd.*

ment was introduced and the grain assessment abandoned, it was decided, in a suit brought by the plaintiff against the Collector of Ratnagiri, that the plaintiff was entitled to be paid his dues, on the higher scale of percentage, on the whole consolidated assessment, and the present suit was for these dues payable for the years 1868-69 to 1871-72.

Held, that, whatever the foundation of the *Deshmukhs'* rights originally was, the *sanad* must now be treated as the foundation of those rights as they exist. At the date of that document the receipt of the old allowances had long been interrupted. The whole of what was received from ryots went into the coffers of the State, which paid its collectors (the *Deshmukhs*) by salaries; and consequently the restoration of the old allowances by the Peshwa (by that *sanad*) was in substance a grant by him of part of his land revenue, and therefore fell within the terms of § 4 of the Pensions Act XXIII. of 1871, as a grant of money or land revenue conferred by a former agreement, and therefore that the Civil Courts had no jurisdiction to entertain the suit. VASUDEV S. MODAK *v.* THE COLLECTOR OF RATNAGIRI...**I. L. Rep. 2 Bom. 99, 1877, P. C.**

PERMANENT SETTLEMENT OF POLLIEMS OR ZEMINDARIES, EFFECT OF.

See **Polliem. 1.**

THE COLLECTOR OF TRICHINOPOLY *v.* LEKKAMANI...**L. Rep. 1 I. A. 282.**

PERMANENT STRUCTURES AND IMPROVEMENTS MADE BY HOLDER OF UNDER-TENURE—Protection with respect to—on Suit by Purchaser at Revenue Sale to avoid Under-Tenure.

See **Sale for Arrears of Revenue. 1.**

BHAGO BIBEE *v.* RAM KANT ROY. **I. L. Rep. 3 Cal. 293.**

PERMANENT TENANT — Enhancement of Rent of.

See **Enhancement of Rent. 5.**

PARSOTAM *v.* KALVAN RAVJI . . **I. L. Rep. 3 Bom. 348.**

PERNARTHUM MORTGAGE—Redemption of.

See **Mortgage. 21.**

P. SHEKARI VARMA VALIA RAJAH *v.* MANGALOM AMUGAR...**I. L. Rep. 1 Mad. 57.**

PERPETUAL CULTIVATION, RIGHT OF.

See **Miras. 1.**

BABAJI *v.* NARAYAN...**I. L. Rep. 3 Bom. 340.**

PERPETUAL LEASE.

See **Miras. 1.**

BABAJI *v.* NARAYAN...**I. L. Rep. 3 Bom. 340.**

See **Forfeiture. 1.**

ABLAKH RAI *v.* SALIM AHMAD KHAN.....**I. L. Rep. 2 All. 437.**

"PERSON CLAIMING UNDER A DOCUMENT."

See **Registration. 27.**

BISH NATH...**I. L. Rep. 1 All. 318.**

PERSON IN AUTHORITY—Inducement by.

See **Evidence. 15.**

EMPRESS *v.* RAMA...**I. L. Rep. 3 Bom. 12.**

PERSON TAKING POSSESSION OF THE ESTATE OF A DECEASED HINDU—*Representative— Debts — Probate granted after Decree—Creditor's Suit against Executor to satisfy Decree out of Deceased's Property.*] Until some other claimant comes forward, the party who takes possession of the estate of a deceased Hindu, who has left a will of which probate has not been taken out, must be treated for some purposes as his representative, and a judgment obtained against such a representative is not a mere nullity. Even if it cannot be executed against the estate in the hands of the executor when he has taken out probate, it is at any rate sufficient to enable the plaintiff to sue the executor in order to have the decree satisfied. PROSONNO CHUNDER BHUTTACHARJEE *v.* KRISTO CHYTUNNO PAL. *Markby* and *Prinsep*, JJ...**I. L. Rep. 4 Cal. 342; 3 Cal. Rep. 154, 1878.**

Digitized by Google

PERSONAL DECREE AGAINST MEMBER OF UNDIVIDED HINDU FAMILY—Sale of Family Property in Execution of—Right of other Members of Family.

See the Index heading **Alienation of Ancestral Property by Sale in Execution of Decree against a Member of an Undivided Family.**

PERSONAL DECREE AGAINST A HINDU WIDOW — *Decree for Arrears of Maintenance—Charge on the Inheritance—Sale in Execution of Right, Title, and Interest of Widow —Rights of Purchaser at Execution Sale, and of Reversionary Heir.*] *C.*, a Hindu governed by the Mitakshara law, inherited certain ancestral property from his father, which property was, under the Mitakshara law, charged wth the maintenance of his mother, *N.* On *C.*'s death without issue, the estate passed to his widow *D.*, who allowed the maintenance of *N.* to fall into arrear. *N.* brought a suit against *D.* personally for the arrears of such maintenance, and obtained a decree whereby it was ordered that the plaintiff (*N.*) should recover from the defendant (*D.*) a certain sum on account of her claim, but the decree did not declare the property itself to be liable for the debt. In execution of this decree the right, title, and interest of *D.* in the property were sold, and purchased by the defendant.

The notification of the sale under the decree was that a sale would be held "of whatever right and interest the judgment debtor had in the estates. Besides the right, title, and interest of the judgment debtor, the right and interest of no other person will be sold."

In a suit by the reversionary heir of *C.*, after the death of D., to establish his right of inheritance to, and to recover possession of, *C.*'s estate :—

Held, that the decree being a personal decree, all that could be sold under it was the interest of the widow. Neither the decree nor the sale proceedings having declared the property itself liable for the debt, the purchaser obtained an interest in the estate only during the widow's lifetime. The debt was a personal debt of the widow, and the sale against her in discharge of her personal liability was of the interest which belonged to her, and not the estate which belonged to her husband. It was the widow's property only that was liable to be sold, or was sold, in discharge of her personal debt; and the plaintiff, therefore, was entitled to recover. BAIJUN DOOBEY *v.* BRIJ BHOOKUN LALL AWUSTI...**L. Rep. 2 I. A. 257; I. L. Rep. 1 Cal. 133; 24 W. R. 306.**

On appeal from **15 Beng. L. Rep. 145, n.**

See **Sale in Execution of Decree. 19.**

ALUKMONEE DABEE *v.* BANU MADHUB CHUCKERBUTTY...**I. L. Rep. 4 Cal. 677.**

PERSONAL KNOWLEDGE OF JUDGE.

See **Judge importing his Personal Knowledge of Facts.**

HURPURSHAD *v.* SHEO DYAL...**L. Rep. 3 I. A. 259—286.**

PETITION FOR LEAVE TO APPEAL TO PRIVY COUNCIL...

See **Appeal to Privy Council.**

—— Limitation for—Exclusion of Time necessary to obtain Copy of Judgment.

See **Limitation. 90.**

JAWAHIR LAL *v.* NARAIN DAS... **I. L. Rep. 1 All. 644.**

PETITION FOR LEAVE TO SUE IN FORMA PAUPERIS—Appeal from Order rejecting.

See **Appeal—Civil. 18.**

COLLIS *v.* MANOHAR DAS.....**I. L. Rep. 1 All. 745.**

—— After Suit commenced in Ordinary Form.

See **Suit in Forma Pauperis. 1.**

NERMAL *v.* DOYAL NATH...**I. L. Rep. 2 Cal. 130.**

—— An Unsuccessful—by Mahomedan Wife not such Demand and Refusal of Dower as to constitute Cause of Action.

See **Mahomedan Law—Dower. 1.**

RANEE KHAJOOROONISSA *v.* RANEE RYEESOONISSA...**L. Rep. 2 I. A. 235.**

1.—— *Act VIII. of* 1859, § 308—*Institution of Suit—Limitation.*] Where an application for permission to sue *in formâ pauperis* is numbered and registered, and deemed a plaint in the suit, not in consequence of proof of the plaintiff's

Digitized by Google

PETITION FOR LEAVE TO SUE IN FORMA PAUPERIS—*contd.*

pauperism, but in consequence of his abandoning his claim to sue as a pauper, and paying the fees chargeable under the Court Fees Act, the date of such payment, and not the date of the application, must be taken, in computing the period of limitation, to be the date of the presentation of the plaint and institution of the suit. SKINNER *v* ORDE. *Stuart*, C J., and *Pearson*, J... **I. L. Rep. 1 All. 230, 1876.**

Reversed on appeal—*see infra.*

2. —— *Is a Plaint from the Date on which it is filed—Practice—Act VIII. of* 1859, §§ 308, 310—*Transfer of Suit—Act VIII of* 1859, §§ 11, 12, 13.] On the 20th of February 1873, the plaintiff filed, in the Court of the Subordinate Judge at Meerut, a petition setting out all the particulars required in a plaint for leave to sue *in formâ pauperis*. The claim embraced landed property which was situated partly within the jurisdiction of the High Court of the N. W. Provinces, and partly within the jurisdiction of the Chief Court of the Punjaub. The Judge of Meerut rejected the petition, on the ground that the question of the plaintiff's pauperism could be more conveniently tried in the Punjaub. The plaintiff thereupon filed it in the Court of the Deputy Commissioner of Delhi, and on the 14th of April 1873 an order was made by that Court, after examining witnesses, admitting the plaintiff's suit *in formâ pauperis*. On an application by the Deputy Commissioner to the High Court of the Punjaub for authority to proceed under § 13 of Act VIII. of 1859, that Court, on the 29th of May 1873, directed that "the plaint should be returned to the plaintiff, with instructions that he should present it to some Court in the N.-W. Provinces." The plaintiff, accordingly, took the proceedings back to the Court of Meerut, which Court, on the 19th of July 1873, ordered "that the case be brought on the file and numbered." Questions having been raised whether the finding of pauperism in the Delhi Court availed in the Meerut Court, the plaintiff, on the 27th of November 1874, paid the proper stamps in Court. The defendant then objected that the suit ought not to proceed: (1) because the plaintiff had fraudulently applied to be made a pauper; and (2) that the suit should be regarded as instituted on the date the Court fee was paid, which was beyond the period of limitation. It was found on the evidence that there had been no fraud on the part of the plaintiff in filing his petition to be allowed to sue as a pauper:—

Held, that the petition of plaint filed and numbered on the 19th of July 1873, although so much of it as asked to be allowed to sue *in formâ pauperis* was given up when the Court fees were paid into Court, must be considered as a plaint from the date on which it was filed, and not, as the High Court held, from the date on which the stamps were paid. If there had been any fraud found on the part of the plaintiff, the case would have been different.

Quære, whether the High Courts of the N. W. Provinces and the Punjaub had power, under Act VIII. of 1859, §§ 11, 12, 13, to transfer the suit from the Delhi to the Meerut Court in the same position in which the suit stood before it was transferred, so as to import into the suit when filed in the latter Court, the finding to which the former had come on the issue of pauperism. SKINNER *v.* ORDE... **L. Rep. 6 I. A. 126, 1879; I. L. Rep. 2 All. 241; 4 Cal. Rep. 331.**

See NIRMUL CHANDRA MOOKERJEE *v.* DAYAL NATH BHUTTACHARJEE... **I. L. Rep. 2 Cal. 130.**

Under **Suit in Forma Pauperis.**

PETITION WITHOUT SUIT—APPLICATION BY, FOR APPOINTMENT OF GUARDIAN.

See **Guardian, Appointment of.**

In the matter of BITTAN.....**I. L. Rep. 2 Cal. 357.**

PLAINT—Boundaries — Specification of — when whole Estate bearing Name, sued for.

See **Civil Procedure Code, Act VIII. of 1859, § 26, Cl. 4 and 5.**

RAM DAYAL KHAN *v.* AJOODHIA RAM KHAN.....**I. L. Rep. 2 Cal. 1.**

—— *Cause of Action—Consent by* Benameedar.] The plaint alleged that the first three defendants, with a brother since dead, purchased a putnee mehal therein described; that having failed to pay the rent to the zemindar, the putnee mehal was sold, and was purchased by the three first defendants out of their own funds as *Sebaits* of an idol; that subsequently they presented a petition praying that the name of their

Digitized by Google

PLAINT—*contd.*

mother, the fourth defendant, might be inserted as purchaser in the place of their names, and that the Collector in compliance with their petition, entered her name as purchaser. The plaint then alleged a subsequent sale to the plaintiffs by the first three defendants; that they, on the 9th of Assar 1276, caused a *kobala* to be executed by the fourth defendant, and that they, being the real owners, became witnesses to the deed, and received the whole of the purchase-money; and prayed, by reason of ouster and disturbance alleged, for damages against all the defendants for breach of the following covenant contained in the *kobala* :—

"If any one making any objection to the sale by me of the said mehal give you any trouble in any way, then I will put matters straight. If I fail to do so, I will return the consideration money. If I do not return it, you will realize it by meany of a suit."

The Civil Judge, in whose Court the suit was filed, held, upon the plaint and the instrument of sale, that there was no cause of action against anybody. The High Court remanded the case, to try, whether there had been the ouster and disturbance alleged, and whether under the circumstances they constituted a breach of the contract; but, having made the remand, they decided that the contract was one which bound the mother only, and that the sons not being bound by it, the suit ought to stand dismissed against them :—

Held on appeal to the Privy Council, that, on the plaint and the allegations found in it, the plaintiff had disclosed what might be a cause of action against all the defendants, and that the case must be remanded accordingly. The allegations were that the sons caused the contract to be made, and the plaint throughout treated the mother as the mere instrument.

The question to be tried, therefore, on this point would be, whether the contract was really entered into by the mother as agent, and on behalf of the three sons and by their authority. BISHESWARI DEBYA *v.* GOVIND PERSAD TEWARI.....**L. Rep. 3 I. A. 194. 1876.**

PLAINT—AMENDMENT OF.

See **Amendment of Plaint.**

See **Assignment of Mortgage.**

GANPAT *v.* ADARJI . **I. L. Rep. 3 Bom. 312.**

PLAINT—AMENDMENT OF—*contd.*

See **Civil Procedure Code, Act VIII. of 1859, § 7. 5.**

RAM TARRUN *v.* HOSSEIN BAKSH... **I. L. Rep. 3 Cal. 785.**

—— Adding Parties—Suit against Agent—Amendment by adding Principal refused.

See **Parties to Suit. 7.**

KOEGLER *v.* PROSONNO COOMAR... **I. L. Rep. 2 Cal. 472.**

—— Disallowed on Appeal, where Non-Joinder of Plaintiffs not remedied in Court below though objected to.

See **Parties to Suit. 9.**

DULAR CHAND *v.* BALRAM DAS... **I. L. Rep. 1 All. 454.**

—— Originally seeking Declaratory Decree, by paying Court Fees on Ejectment Suit, refused.

See **Declaratory Decree. 3.**

CHOKALINGAPESHANA *v.* ACHIYAR. **I. L. Rep. 1 Mad. 40.**

—— Pre-emption Suit.

See **Amendment of Plaint. 1.**

DURGA PRASAD *v.* NAWAZISH ALI. **I. L. Rep. 1 All. 591.**

—— Suit against Firm—Amendment to charge one Partner only disallowed.

See **Company—Winding up—Contributory. 1.**

THE LONDON, BOMBAY, AND MEDITERRANEAN BANK *v.* BHANJI ZUTANI ..**I. L. Rep. 2 Bom. 116.**

—— Suit against Municipality—Substitution of President for Secretary as Defendant—Limitation.

See **Act XV. of 1873, § 43.**

MANNI KASAUNDHAN *v.* CROOKE... **I. L. Rep. 2 All. 296.**

PLAINT — PRESENTATION OF — On Day on which Court should have re-opened after Vacation.

See **Limitation. 6. 13.**

BISHAN CHAND *v.* AHMAD KHAN... **I. L. Rep. 1 All. 263.**

PURRAN C. GHOSE *v.* MUTTY LALL **I. L. Rep. 4 Cal. 50.**

Digitized by Google

PLAINT, RETURN OF—Appeal from Order for—after Admission of Suit.

See **Appeal—Civil. 26.**

KALIAN DAS *v.* NAWAL SINGH...**I. L. Rep. 1 All. 620.**

—— Appeal from Order for — after Issues framed.

See **Appeal. 23.**

ABDUL *v.* RAJINDRO...**I. L. Rep. 2 All. 357.**

PLAINT, VARIANCE BETWEEN— AND PROOF.

See **Estoppel. 3.**

GOUR MONEE *v.* KRISHNA CHUNDER...**I. L. Rep. 4 Cal. 397.**

See **Suit for Confirmation of Possession. 1.**

TERIETPUT SINGH *v.* GOSSAIN DAS. **I. L. Rep. 4 Cal. 46.**

RAM DOOLARY *v.* THACOOR ROY... **Ibid. 61, p. 63.**

See **Land Tenures in Kanara.**

PLANTING TREES AND SINKING WELLS CONTRARY TO CONDITION IN LEASE.

See **Forfeiture. 1.**

ABLAKH RAI *v.* SALIM AHMED KHAN.....**I. L. Rep. 2 All. 437.**

PLEADER—Receipt of Money or Valuable Documents by—on behalf of Client—*Vakalatnama* Sufficient Authority.

See **Vakalatnama.**

ANONYMOUS...**I. L. Rep. 3 Cal. 767.**

—— Special Agreement with—for Reward in event of Success, proportioned to Amount Decreed.

See **Inam Chitti.**

RAMCHANDRA *v.* KALU.....**I. L. Rep. 2 Bom. 362.**

—— Suspension of—Special Leave to appeal from Order.

See **Practice—Privy Council. 5.**

In the matter of QUARRY.....**I. L. Rep. 2 All. 511; L. Rep. 7 I. A. 6.**

PLEADER'S FEES — *Pre-emption Suit—Costs—Act XX. of* 1865, § 37.] *Held*, in a suit for pre-emption, where, it was found by the Court that the actual price of the property was less than the price stated in the deed of sale, and the Court gave the plaintiff a decree with costs, that the amount payable by the defendant in respect of the fees of the plaintiff's pleader ought to be calculated, not on a valuation of the property which was found to be false, or on the amount on which the Court fee on the plaint was paid, but on the real value of the property. DEBI SINGH *v.* BHUP SINGH. *Stuart*, C.J., and *Pearson*, J.....**I. L. Rep. 1 All. 709, 1878.**

PLEDGE BY SERVANT OF GOODS LEFT IN HIS CUSTODY.

See **Contract. 15.**

BIDDOMOYE DABEE *v.* SITTARAM. **I. L. Rep. 4 Cal. 497.**

PLYING BOATS NEAR A PUBLIC FERRY.

See **Criminal Trespass. 2.**

MUTHRA *v.* JAWAHIR...**I. L. Rep. 1 All. 527.**

POINT NOT TAKEN IN COURT BELOW.

See **Objection not Raised in Court Below.**

POINT NOT RAISED IN THE MEMORANDUM OF APPEAL.

See **Appeal—Civil. 8.**

And *see* **Declaratory Decree. 13.**

PORAN SOOKH *v.* PARBUTTY...**I. L. Rep. 3 Cal. 612.**

POLICE OFFICER—Evidence Act I. of 1872, §§ 25, 26—Deputy Commissioner of Police.

See **Evidence. 13.**

REG. *v.* HURRIBOLE...**I. L. Rep. 1 Cal. 207.**

POLICY OF INSURANCE—Construction of.

See **Insurance.**

HAJEE ISMAIL *v.* SHAMJI...**I. L. Rep. 2 Bom. 550.**

POLICY OF LIFE ASSURANCE—Stamp on Assignment and Retransfer by Endorsement of.

See **Stamp. 1.**

THOMSON'S POLICY.....**I. L. Rep. 3 Cal. 347.**

Digitized by Google

POLLIEM—*Madras Regulations XXV. and XXXI. of* 1802—*Proprietary Right in the Land—Permanent Settlement of* Polliems—*Hereditary Tenure.*] The affirmative words of § 2 of Madras Reg. XXV. of 1802, "that, in consequence of the assessment, the *proprietary right* of the soil shall become vested in the zemindars," &c., did not either give to or take away from the former owners of lands not permanently assessed any rights which they then had. It merely vested in all zemindars an hereditary right at a fixed revenue upon the conclusion of the permanent assessment with them. It is a maxim that affirmative words in a statute, without any negative expressed or implied, do not take away an existing right. There are no words declaring that no proprietary right then existed or should thereafter be deemed to exist, except in Government, in any land not permanently settled; nor was it the intention of the Legislature to pass such an enactment.

The words "proprietors of land," as used both in the Bengal Code of 1793 and the Madras Code of 1802, have a technical signification, and refer to "zemindars, independent talookdars, and others who pay the revenue assessed upon their estates immediately to Government;" and the words "proprietary possession," as used in the recital of Reg. XXV. of 1802 (Madras), must be read in a similar sense, as meaning the possession and the rights of a proprietor in the technical sense in which that word is used, *viz.*, the person who pays the revenue immediately to Government.

The preamble to Madras Reg. XXV. of 1802 recognizes the right of private property, and does not assert a right on the part of Government to deprive or dispossess zemindars in their lifetime, or their heirs after their deaths, for the purpose of transferring their rights to Government, or to new holders at the will of Government, independent of any considerations connected with the realization of the revenue.

The object of Madras Reg. XXXI. of 1802 was merely the protection of the revenue from invalid *lakhiraj* grants, and to provide for the mode of trying the validity of titles of persons claiming to hold their lands exempt from the payment of revenue; it was not intended to confer upon Government any title which did not then exist. The words "alienations of lands" in the preamble referred not to mere transfers from one proprietor to another, but to grants for holding lands exempt from the payment of revenue.

POLLIEM—*contd.*

A *polliem* may be hereditary, and the existence of a proprietary estate in *polliems* or other lands not permanently assessed, and the tenure by which it has been held, are matters judicially determinable on legal evidence, just as the right to any other property.

The *polliem* of *Marungapuri* is an ancestral hereditary estate, and not subject to the appointment of Government.

In India, proof of possession of land or receipt of rent by a person who pays the land revenue immediately to Government is *primâ facie* evidence of an estate of inheritance in the case of an ordinary zemindary. The evidence is still stronger if it be proved that the estate has passed, on one or more occasions, from ancestor to heir. There is no difference in this respect between a *polliem* and a zemindary. The only difference between a *polliem* or a zemindary which is permanently settled and one that is not is that in the former the Government is precluded for ever from raising the revenue; and in the latter the Government may or may not have that power. THE COLLECTOR OF TRICHINOPOLY *v.* LEKKAMANI.....**L. Rep. 1 I. A. 282; 14 Beng. L. Rep. 115; 21 W. R. 358, 1874.**

SRI RAGHUNADA *v.* SRI BROJO KISHORAM...**L. Rep. 3 I. A. 154.**

Under **Hindu Law—Adoption. 11,** and **Succession to Impartible Zemindary for which no Permanent Sanad has been issued.**

S. C. under **Hindu Law—Legitimacy.**

2. —— *Whether Hereditary or not—Practice—Issues.*] An unsettled *polliem* in the Madras Presidency may be hereditary; whether it is so or not, must be ascertained by evidence in each case. Proof of possession or receipt of rent by a person who pays the land revenue direct to Government is *primâ facie* evidence of an estate of inheritance.

Where an issue, though in terms covering the main question in the cause, does not sufficiently direct the attention of the parties to the main question of fact necessary to be decided, and a party may have been prevented from adducing evidence, a fresh issue may be directed to try the principal question of fact. The first issue raised by the lower Court was, whether a zemindary, or

Digitized by Google

POLLIEM—*contd.*

the income thereof, was answerable for the debt of the late zemindar. Their Lordships granted an issue to try whether the late zemindar had an estate of inheritance in the zemindary which descended to his minor son as his heir; on condition that the respondents, who asked for the issue, notified to the High Court, within a reasonable time, their desire to have that issue referred for trial, and on payment of the costs of the appeal to the Judicial Committee and of the appeal to the High Court. OOLAGAPPA CHETTY *v.* Hon. D. ARBUTHNOT.....**L. Rep. 1 I. A. 268; 14 Beng. L. R. 115, 1874.**

POOJAH DALAN—Partition of.

See **Execution of Decree. 11.**

RAJCOOMAREE *v.* GOPAL CHUNDER...**I. L. Rep. 3 Cal. 514.**

PORTION OF A BHAG IN BHAGDARI OR NARWADARI VILLAGE—Attachment of an Unrecognized.

See **Bombay Act V. of 1862. 1. 2.**

RANCHODAS *v.* RANCHODAS...**I. L. Rep. 1 Bom. 581.**

ARDASIR *v.* MUSE...**I. L. Rep. 1 Bom. 601.**

POSSESSION — Formal — Delivery of — in Execution of Decree.

See **Limitation. 12.**

KOONJO MOHUN *v* NOBO COOMAR. **I. L. Rep. 4 Cal. 216.**

—— Given by Ameen in a *Butwara* Proceeding —Effect of.

See **Criminal Procedure Code, Act X. of 1872, § 530. 2.**

MACKENZIE *v.* SHERE BAHADOOR SAHI...**I. L. Rep. 4 Cal. 378.**

—— Goods left in Custody of Servant—Pledge of.

See **Contract. 15.**

HIDDOMOYE DABEE *v.* SITTARAM. **I. L. Rep. 4 Cal. 497.**

—— Juridical—as opposed to Physical.

See **Limitation. 35.**

MADHUBCHUNDER *v.* SHAMCHAND. **I. L. Rep. 3 Cal. 243.**

—— Peaceful—Confirmation of.

See **Criminal Procedure Code, Act X. of 1872, § 530. 3.**

MOHESH CHUNDER...**I. L. Rep. 4 Cal. 417.**

POSSESSION—*contd.*

—— Transfer of Property by Person out of.

See **Landlord and Tenant. 8.**

LOKE NATH *v.* JUGOBUNDHOO...**I. L. Rep. 1 Cal. 297.**

POSSESSION OF ADULTERATED COTTON.

See **Cotton Frauds Act (Bombay) IX. of 1863, § 2.**

REG. *v.* HANMANTA...**I. L. Rep. 1 Bom. 228.**

——In British Territory—Adulteration in Foreign Territory—Jurisdiction.

See **Bombay Cotton Frauds Act VII. of 1878, §§ 6 and 14.**

IMPX. *v.* KHIMCHAND NARAYAN... **I. L. Rep. 3 Bom. 384.**

POSSESSION, DELIVERY OF—Or Registration, necessary to validate Sale in Hindu Law, against Third Persons claiming under Vendor, without Notice.

See **Hindu Law—Sale of Land.**

LALLUBHAI *v.* BAI AMRIT...**I. L. Rep. 2 Bom. 499.**

——Unnecessary to validate *San* Mortgage.

See **Bombay Act V. of 1862. 1.**

RANCHODAS *v.* RANCHODAS...**I. L. Rep. 1 Bom. 581.**

POSSESSION OF SALT EARTH.

See **Madras Reg. I. of 1805, § 18.**

REG. *v.* BYLA ASCHI ..**I. L. Rep. 1 Mad. 278.**

POSSESSION FOR TWELVE YEARS BY GRANTEE UNDER INVALID GRANT.

See **Grant by Wife during Absence of Husband.**

BEJOYCAUNDER *v.* ROY PRASONNO... **I. L. Rep. 4 Cal. 327.**

POSTPONE - PETITION — *Suit on.*] Plaintiff sued in the Munsiff's Court of Ellore for the recovery of certain moneys claimed as due under a "postpone-petition." In execution of a decree in former suit between the same parties, a petition was presented by them to the Munsiff's Court stating an arrangement between them for the payment of the amount decreed by instalments, with a provision that, in default of payment, "the Court may, on the application of

Digitized by Google

POSTPONE - PETITION—*contd.*

the plaintiff, issue a warrant and collect the amount, with costs of the petition, from the produce of my share of the Agraharan lands * * which are held liable by the *rasinama* decree of this suit, from the said lands, from my other property and from myself, and pay the same to the plaintiff." The petition concluded thus—"We, both parties, present this postpone-petition with our free will and consent, and pray for its being enforced according to its terms."

Held, on second appeal, affirming the decree of both the lower Courts, that as it was clear that no intention existed between the parties to create new rights enforcible by suit in supersession of those acquired or declared by the decree, a suit on the "postpone-petition" was not maintainable. DARBHA VENKAMMA *v.* RAMA SUBBARAYADU. **I. L. Rep. 1 Mad. 387. 1878. F. B.**

POSTPONEMENT OF PERIOD OF DISTRIBUTION — Gift to Class — Child born after Testator's Death, but before Period of Distribution, takes.

See **Will. 5.**

MASEYK *v.* FERGUSON...**I. L. Rep. 4 Cal. 670.**

—— Gift of Residue to a Class—Act X. of 1865, §§ 98, 101, 102.

See **Will. 4.**

MASEYK *v.* FERGUSON...**I. L. Rep. 4 Cal. 304.**

POSTPONING SALE IN EXECUTION OF DECREE—Fresh Proclamation necessary.

See **Sale in Execution of Decree. 6.**

GOOPEE NATH *v.* ROY LUCHMEPUT.....**I. L. Rep. 3 Cal. 542.**

POTTA—Stipulation in—for Increase in Rental to be made Yearly as Lands let Cultivated—Suit to recover Rent as per — Notice of Enhancement.

See **Bengal Act VIII. of 1869, § 14.**

NISTARINI DASI *v.* BONOMALI CHATTERJI...**I. L. Rep. 4 Cal. 941.**

POWERS OF AN APPELLATE COURT.

See **Appellate Court, Powers of.**

DURGA PRASAD *v.* KHAIRATI...**I. L. Rep. 1 All. 545.**

POWERS OF AN APPELLATE COURT—*contd.*

—— *To add Parties — Act X. of* 1877, §§ 32, 582—*Act XV. of* 1877, § 22.] *S.* sued *N.* and *R.* to recover the profits of a certain share in a zemindary. The Court of first instance passed a decree against *N.*, and dismissed the suit as against *R.* *N.* appealed from this decree, but *S.* did not. The Appellate Court made *R.* a respondent, the period of limitation allowed by law for *S.* to have preferred an appeal having then expired, and eventually reversed the decree, dismissing the suit as against *N.*, and giving *T.* a decree against *R.* :—

Held that, though the Appellate Court was competent to make *R.* a party to the appeal under §§ 32 and 582 of Act X. of 1877, yet it was not competent, with reference to § 22 of Act XV. of 1877, to give *S.* a decree against *R.*, the former not having appealed within the time allowed by law. RANJIT SINGH *v.* SHEO PRASAD RAM. *Stuart*, C. J., and *Spankie*, J ...**I. L. Rep. 2 All. 487, 1879.**

POWER OF APPOINTMENT—Execution of.

See **Will. 8.**

FEHRSEN *v.* SIMPSON...**I. L. Rep. 4 Cal. 514.**

POWER OF ARBITRATORS TO ADMINISTER OATH OTHER THAN IN PRESCRIBED FORM.

See **Oaths Act X. of 1873, §§ 8, 10, 13.**

WALI-UL-LA *v.* GHULAM ALI...**I. L. Rep. 1 All. 535.**

POWER OF ATTORNEY—Power to receive Money—Assignment.

See **Stamp. 3.**

BHAGVANDAS *v.* ABDUL HUSEIN...**I. L. Rep. 3 Bom. 49.**

POWER TO CEDE TERRITORY.

See **Cession of Territory.**

LACHMI NARRAIN *v.* RAJA PERTAP SINGH...**I. L. Rep. 2 All. 1.**

DAMODHAR GORDHAN *v.* DEORAM KANJI .....**L. Rep. 3 I. A. 102; I. L. Rep. 1 Bom. 367.**

Digitized by Google

POWERS OF CERTIFICATED AND UNCERTIFICATED GUARDIANS

See **Alienation by Guardian. 2.**

RAM CHUNDER *v.* BROJONATH...I. L. Rep. 4 Cal. 929.

See **Mahomedan Law — Sale by Guardian.**

HASAN ALI *v.* MEHDI HUSSAIN... I. L. Rep. 1 All. 533.

See **Mortgage. 30. 31.**

ABHASEE BEGUM *v.* MOHARANEE RAJROOP...I. L. Rep. 4 Cal. 33.

DEBI DUTT SAHOO *v.* SUBOODRA BIBEE ... I. L. Rep. 2 Cal. 283.

See **Review. 10.**

MADHO DAS *v.* RUKHMAN SERAK SINGH...I. L. Rep. 2 All. 287.

See **Sale by Guardian.**

SOONDER NARAIN *v.* BENUD RAM. I. L. Rep. 4 Cal. 76.

POWER OF THE COMMISSIONER FOR TAKING ACCOUNTS TO GRANT CERTIFICATES.

See **Accounts. 3.**

RUSTOMJI *v.* KESSOWJI ... I. L. Rep. 3 Bom. 161.

POWER OF COMPANY TO SUB-DIVIDE SHARES.

See **Agreement to take Shares.**

ANUNDJI *v.* NARIAD S. & W. Co. I. L. Rep. 1 Bom. 320.

POWER OF DEPUTY MAGISTRATE TO QUESTION SANCTION TO PROSECUTE GIVEN BY SUPERIOR.

See **Sanction to Prosecute. 2.**

EMPRESS *v.* ISAD ALLY.....I. L. Rep. 4 Cal. 869.

POWER OF DIRECTORS TO BORROW MONEY.

See **Power of Directors to bind Company by Bill of Exchange.**

In the matter of THE NEW FLEMING S. & W. COMPANY (LIMITED). I. L. Rep. 3 Bom. 439, 1879.

POWER OF DIRECTORS TO BIND COMPANY BY BILLS OF EXCHANGE—*Bills of Exchange—Liability of Company on—drawn by Directors as such—Indian Companies Act X. of* 1866, § 47—*Company Winding up—Interest on Debts subsequently to Date of Order to wind up—Rules of Court of 3rd August* 1866] The Articles of Association of the New Fleming Spinning and Weaving Company, Limited, authorized the directors "to raise or borrow from time to time in the name or otherwise on behalf of the Company such sums of money as they from time to time think expedient, either by way of sale or mortgage of the whole or any part of the property of the Company, or by bonds, debentures, or promissory notes, or in such other manner as they deem best, and for the purpose of securing the repayment of any money so borrowed, with interest, to make and carry into effect any arrangement which they may deem expedient by conveying or assigning any property of the Company to trustees or otherwise":—*Held*, that though power to borrow money on bills of exchange was not specifically given, yet bills of exchange being in many respects analogous to promissory notes, and promissory notes having been specifically mentioned in the article, the power to raise money by an equally well known and recognized mode, *viz.*, by drawing, indorsing, or accepting bills of exchange, must be deemed to be included in the general words "or in such other manner as they deem best."

Three of the directors of the above Company, one of whom was also the Secretary, Treasurer, and Agent of the Company, drew a bill in favour of *S.* in the following form:—"Sixty days after the date of this first of exchange (second and third of the same tenor and date not being paid) pay to the order of *S.* the sum of Rs. 2 lakhs only, value received, and place to account of *G. P., K. N., N. K.*, Secretary, Treasurer and Agent, the New Fleming S. & W. Co., Limited, Directors."

The bill was indorsed by *S.* to the Bank of Bombay, was duly presented for payment to the drawee, and protested for non-payment. Subsequently to the date of the drawing of the bill, the New Fleming S. & W. Co., Limited, went into liquidation. The Bank of Bombay claimed as indorsees of the bill to prove against the Company as drawers:—

Held, that assuming that companies under the Indian Companies Act (X. of 1866) are by § 47 liable on bills of exchange drawn on their be-

Digitized by Google

POWER OF DIRECTORS TO BIND COMPANY BY BILLS OF EXCHANGE—*contd.*

half, or on account of persons acting under their authority, the bill in question was not such a bill. Whether or not a note or bill must, on the face of it, *express* that it is made, accepted, or indorsed "by or on behalf or on account of" the company, yet there must be on the face of it that which shows that it was so made, accepted, or indorsed, and which excludes the inference that it was made, accepted, or indorsed by or on behalf or on account of any other person. A bill or note may be in a certain sense on behalf of, or on account of, a company, though there is upon its face no reference to the company even in the form of a description of the persons who actually make, accept, or indorse as being directors or secretary. As between such persons and the company such a bill or note may well be on behalf or on account of the company: but it is not, therefore, so as between the company and third parties. So far as third parties are concerned, a company under the Act can be made liable on a bill or note only when such bill or note on the face of it expresses that it was made, accepted, or indorsed by, or on behalf, or on account of the company, or where that fact appears by necessary inference from what the face of the instrument itself shows. The addition to the signatures of individuals as makers, drawers, acceptors, or indorsers, of notes or bills of their description as director or directors, secretary, treasurer and agent of a certain company, is not considered to raise such inference, as it does not exclude the supposition that, though described as directors, they intended to make themselves personally liable to holders of the instrument, though as between themselves and the company they may be entitled to be indemnified for anything they may have paid on account of the company in respect of such notes or bill.

Dutton v. *Marsh* (L. Rep. 6 Q. B. 361) followed.

Rule 24 of the Rules dated the 23rd of August 1866 made by the High Court of Bombay under the powers given by § 189 of Act X. of 1866, is *ultra vires* so far as it allows interest on debts or claims subsequent to the date of the order to wind up a company to creditors whose debts or claims do not carry interest. *In the matter of* THE NEW FLEMING S. & W. Co. (LIMITED). *Green*, J.....**I. L. Rep. 3 Bom. 439, 1879.**

Affirmed on appeal...**I. L. Rep. 4 Bom. 275.**

POWERS OF DIRECTORS TO BORROW AND MORTGAGE—*Ratification by Company of particular Act of Directors done in Excess of Authority not an Extension of Future Authority.*]

The O. R. Co. was duly registered as a company limited by guarantee under an Act of the Legislature of Victoria which followed and adopted the provisions of the *Companies Act*, 1862.

The Articles of Association contained no restriction or limitation on the company's power of borrowing. But by Article 50 of the Articles of Association (which were registered under the Companies Act) it was stipulated "that subject, and without prejudice to the power therein given to the meetings of shareholders, and the conditions and restrictions therein contained, the directors for the time being should have, amongst others, the following powers, that is to say, the power of borrowing and taking up, on the credit of the said company or of its property, any sum or sums of money from time to time, but so nevertheless that the total amount to be so taken up should not exceed in the aggregate, *as an existing debt at the same time*, one-half of the then actually paid-up capital of the company."

The authority of the directors so limited was capable of being extended, under the provisions of Art. 31, at a general meeting of the shareholders called for the purpose, by one-half of the votes of all the shareholders given at such meeting.

On the 23rd of December 1867, the directors obtained a letter of credit, No. 150, for £10,000, and on the 11th of September 1868 a letter, No. 141, for £5,000, and stated to that effect in their report of the 29th of October 1868, which was ratified at the half-yearly meeting of that date. Letter 150 expired on the 29th of March 1869, but was renewed. On the 9th of September 1869, the directors obtained another letter of credit, No. 153, for £5,000, but this act was never assented to or ratified by the shareholders. In a suit by the respondent Bank to enforce against the appellant, as the purchaser at a Court sale in execution of a decree, of the right, title and interest of the O. R. Co., an equitable mortgage which had been granted by the company to secure advances made by the Bank, which, with interest, amounted to £15,296, it appeared that half the paid-up capital was never more than £8,550; that at the end of 1870 the balance due to the Bank was £8; and that the sums claimed in the suit had been advanced in February 1871, *viz.*, £10,000 under

Digitized by Google

POWERS OF DIRECTORS TO BORROW AND MORTGAGE—*contd.*

letter No. 150, and £5,000 under letter No. 153:—

Held, that the limitation in Art. 50 of the powers of the directors of borrowing and mortgaging, did not form part of the constitution of the company, and did not limit the general powers of the company or of the whole body of shareholders, but was merely a limitation of the powers of the directors given by the same article; and that acts of the directors in excess of their authority might be ratified by the company and rendered binding.

Although it would be competent for a majority of the shareholders present (though not a majority of the shareholders of the company) at an extraordinary general meeting convened for that object, and of which object due notice had been given, to ratify an act previously done by the directors in excess of their authority; and although, if a report had been circulated before a half-yearly meeting distinctly giving notice that the directors had done an act in excess of their authority, and that the meeting would be asked by confirming the report to ratify the act, that might be sufficient notice to bring the ratification within the competency of the majority of the shareholders present at the half-yearly meeting; yet, if the object was to give the directors in future an extended authority beyond what was given by Art. 50, that would be an alteration of the provisions contained under the articles which, under Cl. 31, could only be made by a vote of one-half of all the shareholders of the company.

The ratification of the report of the 29th of October 1868 did not authorize the directors to obtain letter of credit No. 153, in September 1869, or to borrow the £5,000 thereon, in February 1871.

The ratification of the letter of credit No. 150, for £10,000, did not authorize the renewal of it, or the acting upon it after the time originally limited had expired.

The ratification at a half-yearly meeting of a particular act in excess of authority would not extend the authority of the directors so as to authorize them to do similar acts in future.

Royal British Bank v. *Turquand* (5 Ell. & Bl. 248; 6 ibid. 327) distinguishd. The respondent Bank, therefore, were not, as against the appellant, entitled to a charge on the property beyond

POWERS OF DIRECTORS TO BORROW AND MORTGAGE—*contd.*

the amount of one-half the paid-up capital, *i.e.*, £8,550. IRVINE *v.* THE UNION BANK OF AUSTRALIA.....**L. Rep. 4 I. A. 86, 1877; I. L. Rep. 3 Cal. 280.**

POWER OF THE DISTRICT JUDGE TO INTERFERE WITH AN ORDER FOR LOCAL INVESTIGATION.

See **Local Investigation.**

NIROD KRISHNO ROY *v.* WOOMANATH MOOKERJEE.....**I. L. Rep. 4 Cal. 718.**

POWER OF DISTRICT JUDGE TO TRANSFER TO HIS OWN COURT PROCEEDINGS IN EXECUTION PENDING IN SUBORDINATE COURT.

See **Civil Procedure Code, Act VIII. of 1859, § 6.**

GAYA PARSHAD *v.* BHUP SINGH...**I. L. Rep. 1 All. 180.**

POWER OF THE DISTRICT MAGISTRATE TO CALL FOR PROCEEDINGS IN CASE OF DISCHARGE BY SUBORDINATE MAGISTRATE.

See **Revival of Prosecution. 5.**

IMPX. *v.* GOWDAPA...**I. L. Rep. 2 Bom. 534.**

POWER OF DISTRICT MAGISTRATE TO ORDER RE-TRIAL OF ACCUSED DISCHARGED UNDER § 215 OF THE CRIMINAL PROCEDURE CODE (ACT X. OF 1872).

See **Criminal Procedure Code, § 295. 1.**

DIJAHUR DUTT...**I. L. Rep. 4 Cal. 647.**

And *see* the Cases collected under **Revival of Prosecution.**

POWER OF DISTRICT MAGISTRATE TO PROCEED WITHOUT COMPLAINT WHERE PROSECUTOR HAS NOT AVAILED HIMSELF OF A SANCTION TO PROSECUTE.

See **Criminal Procedure Code, Act X. of 1872, § 142. 1.**

EMPRESS *v.* NIPCHA...**I. L. Rep. 4 Cal. 712.**

Digitized by Google

POWER OF DISTRICT MAGISTRATE TO REMAND CASE TRIABLE BY A MAGISTRATE ONLY, AFTER A DISCHARGE BY A SUBORDINATE MAGISTRATE.

See **Criminal Procedure Code, Act X. of 1872, § 295. 1.**

DIJAHUR DUTT.....**I. L. Rep. 4 Cal. 647.**

POWER OF EXECUTORS—To mortgage with Power of Sale.

See **Executors, Power of.**

SEALE *v.* BROWN...**I. L. Rep. 1 All. 710.**

POWER OF GRANTEE OF CERTIFICATE TO COLLECT DEBTS, TO MORTGAGE—*Act XXVII. of* 1860.] Where a person to whom a certificate had been granted under Act XXVII. of 1860 to collect debts due to the estate of a deceased Hindu, but who had no share or interest in such estate, contracted a debt for the purpose of paying debts due from such estate, and charged the estate with payment of such debt:—

Held, that the creditor could not, by virtue of the acts of such person, claim to recover the moneys advanced by him to such person from the heirs and estate of the deceased, even though such moneys had been applied to the liquidation of the debts of the deceased. MUNIA *v.* BALAK RAM. *Pearson* and *Oldfield*, JJ...**I. L. Rep. 2 All. 513, 1879.**

POWER OF HIGH COURT, AS A COURT OF APPEAL FROM PRESIDENCY MAGISTRATE, TO INTERFERE UNDER § 147, ACT X. OF 1875.

See **High Court Criminal Procedure, Act X of 1875, § 147. 5.**

JOTHARAM DAVAY...**I. L. Rep. 2 Mad. 30.**

POWER OF THE HIGH COURT, ON CASE RESERVED OR CERTIFIED, TO CONSIDER THE MERITS OF THE CASE.

See **Evidence. 13.**

REG. *v.* HURRIBOLE...**I. L. Rep. 1 Cal. 207.**

—— The High Court on a point of law reserved, as to the admissibility of rejected evidence, has, by Cl. 26 of the Letters Patent and § 101 of the

POWER OF THE HIGH COURT, ON CASE RESERVED OR CERTIFIED, TO CONSIDER THE MERITS—*contd.*

High Court Procedure Code (Act X. of 1875), the power to review the whole case, and determine whether the admission of the rejected evidence would have affected the result of the trial, and the conviction should not be reversed unless the admission of such evidence would have varied the result of the trial. Section 167 of the Evidence Act (I. of 1872) is applicable to criminal as well as to civil cases, and is so to criminal cases whether or not the trial has been before a jury; and the expression in that section "before which such objection is raised" includes the revising or appellate Court. REG *v.* PITAMBER JINA. *Westropp*, C.J., *Sargent* and *Atkinson*, JJ. **I. L. Rep. 2 Bom. 61, 1877.**

POWER OF HIGH COURT TO ENLARGE TIME FOR DEPOSIT OF COSTS.

See **Act VI. of 1874, § 11.**

SOORJMUKHI KOER...**I. L. Rep. 2 Cal. 272.**

POWER OF HIGH COURT TO GRANT SPECIAL PERMISSION TO DEPOSIT MONEY FOR COSTS OF APPEAL TO PRIVY COUNCIL AFTER EXPIRATION OF TIME.

See **Act VI. of 1874, § 8.**

LALLA GOPEE CHAND...**I. L. Rep. 2 Cal. 128.**

POWER OF THE HIGH COURT TO MITIGATE PENALTY OF FORFEITED RECOGNIZANCE BOND.

See **Recognizance.**

EMPRESS *v.* NURUL HUQQ...**I. L. Rep. 3 Cal. 757.**

POWER OF THE HIGH COURT, ON REFERENCE FOR CONFIRMATION OF DEATH SENTENCE, TO CONSIDER THE JURISDICTION OF SENTENCING COURT AFTER ORDER OF DIVISION BENCH TO MAGISTRATE TO INQUIRE INTO CASE.

See **Criminal Procedure Code, Act X. of 1872, § 297. 7.**

EMPRESS *v.* SARMUKH SINGH ..**I. L. Rep. 2 All. 218.**

Digitized by Google

POWER OF HIGH COURT, AS A COURT OF REFERENCE, TO ALTER FINDING.

See **Criminal Procedure Code, Act X. of 1872, § 288.**

REG. *v.* BALAPA...**I. L. Rep. 1 Bom. 639.**

POWER OF THE HIGH COURT AS A COURT OF REVISION—To Consider the Case of a Convict who has not appealed, when dealing with Appeals of his Co-Accused.

See **Criminal Procedure Code, Act X. of 1872, § 297. 8.**

EMPRESS *v.* MURLI...**I. L. Rep. 2 All. 336.**

——To Consider the Evidence.

See **Criminal Procedure Code, Act X. of 1872, § 297, 1. 4. 8.**

In the matter of HARDEO...**I. L. Rep. 1 All. 139.**

EMPRESS *v.* DONNELLY.....**I. L. Rep. 2 Cal. 405.**

EMPRESS *v.* MURLI...**I. L.Rep. 2 All. 336.**

——To Interfere with an Acquittal.

See **Criminal Procedure Code, Act X. of 1872, § 297. 1. 3. 6.**

In the matter of HARDEO.....**I. L. Rep. 1 All. 139.**

In the matter of AUROKIAM...**I. L. Rep. 2 Mad. 38.**

EMPRESS *v.* MIYAJI.....**I. L. Rep. 3 Bom. 150.**

—— To Interfere with Magistrate's Discretion as to Amount of Security to keep the Peace.

See **Criminal Procedure Code, Act. X. of 1872, §§ 294 and 297**

JUGGUT CHUNDER CHUKKERBUTTY. **I. L. Rep. 2 Cal. 110.**

——To Quash Committal by Sessions Judge.

See **Jurisdiction. 16a.**

EMPRESS *v.* LACHMAN SINGH...**I. L. Rep. 2 All. 398.**

——To Set Aside Order of Magistrate ordering Detention of Persons arrested, After Acquittal, pending Appeal from Acquittal.

See **Criminal Procedure Code, Act X. of 1872, § 297. 2.**

REG. *v.* GHOLAM ISMAIL.....**I. L. Rep. 1 All. 1.**

POWER OF THE HIGH COURT ON RETURN TO WRIT OF HABEAS CORPUS TO INQUIRE INTO THE VALIDITY OF COMMITMENT BY SMALL CAUSE COURT.

See **Small Cause Court—Presidency Town. 5.**

In the matter of OMRITOLALL DEY. **I. L. Rep. 1 Cal. 78.**

POWER OF HIGH COURT ON SPECIAL APPEAL TO CONSIDER THE EVIDENCE.

See **Contract. 14.**

NANAK RAM *v.* MEHIN LAL...**I. L. Rep. 1 All. 483.**

POWER OF INAMDAR TO ENHANCE RENT.

See **Inamdar.**

PRATAPRAV GUJAR *v.* BAYAJI NAMAJI...**I. L. Rep. 3 Bom. 141.**

See **Enhancement of Rent. 5.**

PARSOTAM *v.* KALYAN...**I. L. Rep. 3 Bom. 348.**

POWER OF JUDGE ACTING IN ENGLISH DEPARTMENT OF HIGH COURT—To transfer Case.

See **Criminal Procedure Code, Act X. of 1872, § 64.**

REG. *v.* ZUHIRUDDIN...**I. L. Rep. 1 Cal. 219.**

POWER OF JUDGE TO REVIEW JUDGMENT OF PREDECESSOR.

See **Review 2.**

ROY MEGRAJ *v.* BEEJOY GOBIND BURRAL...**I. L. Rep. 1 Cal. 197.**

POWER OF THE LEGISLATURE TO AFFECT THE JURISDICTION OF THE HIGH COURT—Appeal to Privy Council.

See **Act VI. of 1874, § 5. 1.**

FEDA HOSSEIN...**I. L. Rep. 1 Cal. 431.**

See **Legislative Power of the Governor General in Council.**

EMPRESS *v.* BURAH...**I. L. Rep. 3 Cal. 63; I. L. Rep. 4 Cal. 172; L. Rep. 5 I. A. 178; L. Rep. 3 App. Ca. 889.**

Digitized by Google

POWERS OF MAGISTRATES.

See **Criminal Procedure Code, Act X. of 1872, § 56.**

PURSOORAM BOROOAH.....**I. L. Rep. 2 Cal. 117.**

POWER OF MAGISTRATE TO COMMIT, WHEN CASE REFERRED FOR ENHANCEMENT OF SENTENCE.

See **Criminal Procedure Code, Act X. of 1872, § 46.**

In the matter of CHINNIMARIGADU. **I. L. Rep. 1 Mad. 289.**

POWER OF MAGISTRATE TO RECORD EVIDENCE AFTER CASE FOR DEFENCE CLOSED.

See **Practice—Criminal. 1.**

EMPRESS *v.* BALDEO SAHAI...**I. L. Rep. 2 All. 253.**

POWER OF A MAGISTRATE TO RECORD THE STATEMENT OF A PERSON NOT ACCUSED OF AN OFFENCE.

See **Criminal Procedure Code, Act X. of 1872, § 122. 1.**

IMPX. *v.* MALKA...**I. L. Rep. 2 Bom. 643.**

POWER OF MANAGER APPOINTED BY THE COURT—Act VIII. of 1859, § 243.

See **Manager.**

See **Mortgage. 22.**

MORAN *v.* MITTU BIBEE.....**I. L. Rep. 2 Cal. 58.**

POWER OF MANAGER OF JOINT HINDU FAMILY TO PLEDGE JOINT ANCESTRAL PROPERTY FOR PURPOSES OF JOINT ANCESTRAL TRADE — Insolvency — Title of Official Assignee.

See **Hindu Law—Maintenance of Widow. 9.**

JOHURRA BIBEE *v.* SREEGOPAL MISSER...**I. L. Rep. 1 Cal. 470.**

See **Hindu Law—Ancestral Trade.**

JOYKISTO COWAR *v.* NITTYANUND NUNDY...**I. L. Rep. 3 Cal. 738.**

POWER OF MINOR TO AUTHORIZE ADOPTION.

See **Hindu Law—Adoption. 10.**

JOMOONA *v.* BAMASOONDARI...**L. Rep. 3 I. A. 72; I. L. Rep. 1 Cal. 289.**

POWER OF MUNICIPAL COMMITTEE.

See **Right to Sue. 4.**

FAZAL HAQ *v.* MAHA CHAND...**I. L. Rep. 1 All. 557.**

POWER OF MUNICIPAL COMMISSIONER TO CLOSE OR DIVERT PUBLIC HIGHWAY.

See **Beng. Act. III. of 1864.**

EMPRESS *v.* BROJONATH DEY...**I. L. Rep. 2 Cal. 425.**

POWER OF REVENUE COURTS TO AWARD INTEREST IN SUIT FOR PROFITS.

See **Act XVIII. of 1873, § 93, Cl. h.**

TOTA RAM *v.* SHER SINGH.....**I. L. Rep. 1 All. 261.**

POWER OF SALE—Power of Executors to create a Mortgage with.

See **Executors, Power of.**

SEALE *v.* BROWN...**I. L. Rep. 1 All. 710.**

POWER OF SALE IN MORTGAGE—Exercise of—as to Lands in Mofussil without Intervention of Courts of Justice.

See **Mortgage. 32. 33.**

PITAMBER *v.* VANMALJI.....**I. L. Rep. 2 Bom. 1.**

JAGJIVAN *v.* SHRIDHAR.....**I. L. Rep. 2 Bom. 225.**

POWER OF SEBAIT TO BIND THE IDOL'S ESTATE.

See **Dewuttur.**

PROSUNNO KUMARI *v.* GOLAB CHAND...**L. Rep. 2 I. A. 145.**

KONWAR DOORGANATH ROY *v.* RAM CHUNDER SEN...**L. Rep. 4 I. A. 52; I. L. Rep. 2 Cal. 341.**

Digitized by Google

POWER OF SESSIONS JUDGE TO ADMIT CONVICTED PERSON TO BAIL WHERE NO APPEAL LIES.

See **Criminal Procedure Code, Act X. of 1872, § 390.**

REG. *v.* THAKUR PRASHAD...**I. L. Rep. 1 All. 151.**

POWER OF SESSIONS COURT TO COMMIT TO ITSELF CASES NOT TRIABLE EXCLUSIVELY BY COURT OF SESSIONS.

See **Jurisdiction. 16. 16a.**

EMPRESS *v.* FUTTEH JYAB KHAN... **I. L. Rep. 4 Cal. 570.**

EMPRESS *v.* LACHMAN SINGH...**I. L. Rep. 2 All. 398.**

POWER OF SESSION JUDGE TO SANCTION PROSECUTION FOR FALSE EVIDENCE OR FORGERY COMMITTED IN COURT OF MAGISTRATE, 1st CLASS.

See **Sanction to Prosecute. 5.**

IMPX. *v.* PADMANABHA...**I. L. Rep. 2 Bom. 384.**

POWER OF SMALL CAUSE COURT TO RESTORE CASE STRUCK OFF FOR DEFAULT IN APPEARANCE.

See **Small Cause Court—Presidency Town. 1.**

SIB CHUNDER *v.* KISSEN DYAL. **I. L. Rep. 1 Cal. 476.**

POWER OF SUBORDINATE JUDGE TO FILE AN AWARD.

See **Award.**

BALKRISHNA *v.* LAKSHMAN...**I. L. Rep. 3 Bom. 219.**

PRACTICE—CIVIL—Affidavits — Use of—on Application to transfer Case to High Court under Act X. of 1875, § 147.

See **High Court Criminal Procedure, Act X. of 1875, § 147. 3.**

REG. *v.* HADJEE JEEBUN BUX .. **I. L. Rep. 1 Cal. 354.**

—— Affidavits—Use of—on Application to vary or discharge Commissioner's Report.

See **Practice—Civil. 7.**

PRACTICE—CIVIL—*contd.*

—— Affidavits—Cross-Examination on Affidavits as to Documents—Inspection.

See **Practice—Civil. 3.**

—— Affidavits—Right to use, on Return to Writ of *Habeas Corpus*.

See **Privilege from Arrest.**

OMRITOLALL DEY...**I. L. Rep. 1 Cal. 78.**

—— Amendment of Issues at the Hearing.

See **Amendment of Issues at the Hearing.**

BOYLE CHUND SINGH *v.* MAULARD.....**I. L. Rep. 4 Cal. 572.**

—— Appeal—Ground of Appeal taken in Argument, not mentioned in Memorandum.

See **Appeal—Civil. 8.**

And *see* **Declaratory Decree. 13**

PORAN SOOKH *v.* PARBUTTY...**I L. Rep. 3 Cal. 612.**

—— Appeal—Security for Costs.

See **Security for Costs.**

MANECKJI LIMJI *v.* GOOLBAI...**I. L. Rep. 3 Bom. 241.**

—— Cross-Examination on Affidavits as to Documents—Inspection.

See **Practice—Civil. 3.**

—— Extending Time for defendant to obtain Leave to appear and defend Summary Suit on Promissory Note.

See **Civil Procedure Code, Act X. of 1877, § 532.**

GROOM *v.* WILSON...**I. L. Rep. 3 Cal. 539.**

—— Framing Issues.

See **Issues.**

APAYA *v.* RAMA.....**I. L. Rep. 3 Bom. 210.**

—— Fresh Summons to Defendant to appear and answer.

See **Practice—Civil. 4.**

—— Inspection of Documents—Sealing up Immaterial Parts.

See **Inspection. 3.**

HEERALALL BUKHT *v.* RAM SURUN LOLL.....**I. L. Rep. 4 Cal. 835.**

Digitized by Google

PRACTICE—CIVIL—*contd.*

—— Issues — Too great Generality — Fresh Issues—Terms.

See **Pollicm. 2.**

See **Issues. 2.**

OOLAGAPPA CHETTY *v.* ARBUTHNOT .. **L. Rep. 1 I. A. 268.**

—— Issue of Fresh Summons to Defendant to appear and answer.

See **Practice—Civil. 4.**

—— Joinder of Parties.

See the Cases under **Parties to Suit.**

—— Joinder of Parties—Drawer and Acceptor of Bill.

See **Practice—Civil. 5.**

—— Leave to appeal to Privy Council granted *ultra vires*—Preliminary Objection.

See **Practice—Civil. 1.**

—— Material Misstatement in Petition for Special Leave to appeal — Preliminary Objection.

See **Bengal Reg. VIII. of 1819, § 8, Cl. 2.**

RAM SABUK BOSE *v.* MONMOHINI DOSSEE...**L. Rep. 2 I. A. 71.**

—— On Motion to Vary or Discharge Commissioner's Report—Affidavits.

See **Practice—Civil. 7.**

—— Objection not raised in Court Below.

See the Index Heading **Objection not Raised in Court below.**

—— Objections to Report of Commissioners under Act VIII. of 1859, § 181, not taken in Courts below.

See **Practice—Civil. 2.**

—— Reference to Full Bench—Conflict of Opinion between Individual Judges no Ground for.

See **Reference to Full Bench.**

RAJ KOOMAR SINGH *v.* SAHEBZADA ROY...**I. L. Rep. 4 Cal. 20.**

—— Special Appeal—Point not taken in Memorandum of Special Appeal as to Absence of Notice to quit, not allowed to be taken at Hearing.

See **Practice—Civil. 10.**

PRACTICE—CIVIL—*contd.*

—— Security for Costs of Appeal—Poverty.

See **Security for Costs.**

MANECKJI *v.* GOOLBAI.....**I. L. Rep. 3 Bom. 241.**

—— Security for Costs—Residence.

See **Civil Procedure Code, Act X. of 1877, § 380.**

MAHOMED *v.* LALDIN .....**I. L. Rep. 3 Bom. 227.**

—— Right of Witness summoned under § 36 of Indian Insolvent Act, to appear by Counsel.

See **Right of Witness to appear by Counsel.**

In the matter of NURSEY KESSOWJI. **I. L. Rep. 3 Bom. 270.**

—— Vacation—Time for Deposit of Money for Costs of Appeal to Privy Council expiring in—Power of Court to grant Special Permission.

See **Act VI. of 1874, § 8.**

LALLA GOPEE CHAND.....**I. L. Rep. 2 Cal. 128.**

1. —— *Preliminary Objection — Leave to appeal granted in India* ultra vires—*Special Leave to appeal.*] Where the leave to appeal granted by the Court in India was clearly *ultra vires*, an objection by the respondent, made when the appeal was called on for hearing, and before the argument on the merits was commenced, was allowed, and the appeal was dismissed.

The right practice is to take an objection of this kind at the earliest moment, but it is competent for their Lordships to hear it at any stage of the appeal, and also to grant in fitting cases special leave to appeal, *nunc pro tunc*, directing that the petition of appeal should go to Her Majesty, with the report upon the appeal itself. Such application refused in the present case, on the ground that the rights of the appellant might be ascertained, and enforced more satisfactorily in some other proceedings than by their Lordships under the irregular appeal sent up by the Court in India. GAJADHUR PERSHAD *v.* THE TWO WIDOWS OF EMAM ALI BEG...**L. Rep. 2 I. A. 205; 15 Beng. L. R. 221, 1875.**

2. —— *Report under Act VIII. of* 1859, § 181 —*Objections.*] Where a report, or supplemental report, has been made by Commissioners to

Digitized by Google

PRACTICE—CIVIL—*contd.*

whom accounts have been referred for investigation under Act VIII. of 1859, § 181, the Privy Council will not entertain any objections thereto which have neither been brought to the notice of the first Court, nor made in any of the grounds of appeal in the Courts in India. SETHS GUJMULI, JEITHMUL, AND THARUMULL *v.* MUSST. CHABEE KOWAR...**L. Rep. 2 I. A. 34, 1874.**

3. —— *Inspection of Documents—Affidavit as to Documents — Written Statement — Cross-Examination on Affidavit.*] Where the defendant stated on affidavit that a schedule annexed thereto contained a list of all the documents in his possession or power relating to the suit, and certain other documents not mentioned therein were referred to by the defendant in his written statement: —

Held, on the hearing of a summons to consider the sufficiency of the affidavit, that the plaintiff could not cross-examine upon the affidavit, but could only show that it was not an honest affidavit. The proper course was to apply for inspection of the document referred to in the written statement and omitted from the schedule, if inspection was needed. KENNELLY *v.* WYMAN. *Phear*, J.....**I. L. Rep. 1 Cal. 178, 1876.**

4. —— *Summons to Defendant to appear and answer—Fresh Summons—Rules of Calcutta High Court* (*4th December* 1875) 1 *and* (*9th February* 1875) 8.] A plaint was filed on the 12th March 1875, and the summons to the defendant to appear and answer issued on the 13th March 1875. Service could not be effected, and on the 20th March 1875 the plaintiff applied for leave for substituted service, but was refused. No further steps were taken by the plaintiff in the matter until the 21st March 1878, when the plaintiff applied for a fresh summons to issue, the time for the return of the first summons having long since expired:—

Held, that the mere filing of a plaint, or the naked fact that a plaint is on the file, will not of itself prevent the operation of the law of limitation. A plaintiff is bound to take every means in his power by proper proceedings to compel the defendant to appear or to give him notice of the suit. And so long as he can show that he has diligently attempted to perform this duty, and only so long, he is entitled to insist on the pendency of the suit as counteracting the ordinary law of limitation. If the first summons cannot

PRACTICE—CIVIL—*contd.*

be served, the plaintiff should apply, within a reasonable time after its returnable period, for the issue of a fresh summons, and if a proper case be made, the usual returnable period will be extended. In the present case no steps having been taken to renew the summons for three years, and no sufficient case having been made by the plaintiff to excuse the delay, the application for the issue of a new summons was out of time, and therefore refused. RAMKISSEN DOSS *v.* LUCKEY NARAIN. *Pontifex*, J.....**I. L. Rep. 3 Cal. 312, 1878.**

5. —— *Joinder —Suit against Drawer and Acceptor of Bill — Act X. of* 1877, § 29.] The drawer and accepter of a bill of exchange can be joined as co-defendants in a suit by the holder of such bills. PESTONJEE EDULJEE GUZDUR *v.* MIRZA MAHOMED ALLY. *Pontifex*, J.. **I. L. Rep. 3 Cal. 541, 1878.**

6. —— *Interrogatories — Evidence.*] A party at whose instance the interrogatories have been administered must put in the answers as part of his evidence if he wishes to use them at the hearing. GOSTO BEHARY PAL *v.* JOHUR LALL PAL. *Wilson*, J...**I. L. Rep. 4 Cal. 836; 4 Cal. Rep. 164, 1879.**

7. —— *On Motion to discharge or vary Commissioner's Report—Affidavits.*] In moving to vary or discharge the report of a Commissioner for taking accounts, the parties should move on a memorandum of objections filed in the Prothonotary's office, and upon the evidence which was before the Commissioner, and not on affidavits made for the purpose of the motion. On such a motion, affidavits should only be used (1) when ordered by the Court, if it desires fresh evidence; or (2) by special leave of the Court for the purpose of advancing a fact which does not appear on the face of the proceedings before the Commissioner. SUMAR AHMED *v.* HAJI ISMAIL HABIB. *Westropp*, C. J., and *Green*, J.....**I. L. Rep. 1 Bom. 158, 1876.**

8. —— *Variance.*] A Judge is not at liberty to make for a plaintiff a case totally different from that which the plaintiff himself alleges. KACHUBHAI GULABCHAND *v.* KRISHNABAI. *Westropp*, C.J., and *Melvill*, J...**I. L. Rep. 3 Bom. 635, 1878.**

9. —— *Objection Not Raised in Court Below —Appeal—Invalidity of Adoption.*] An objection

Digitized by Google

PRACTICE—CIVIL—*contd.*

to the validity of the adoption of the plaintiff's husband by reason of his having been, at the time of the adoption, one of the two sons of his natural father, and therefore that such an adoption is invalid according to the *Dattaka Chandrika*, § 1, paras. 29 and 30, and the *Dattaka Mimansa*, § 4, paras. 1 and 2, was not allowed to be raised for the first time in regular appeal, as that question of law could only arise on the establishment of a particular fact, which was neither alleged in the Court below, nor any issue raised upon it. JANOKEE DEBEA *v.* GOPAL ACHARJEA. *Markby* and *Mitter*, JJ...**I. L. Rep. 2 Cal. 365, 371, 1877.**

S. C. under **Hindu Law—Adoption. 2.**

10. —— *Objection not Raised in Court below—Want of Notice to Quit.*] In a suit to recover lands, which the plaintiffs alleged to be their ancestral *miras*, from the defendants, who were purchasers at an auction sale of the said lands held in execution of a decree obtained certain persons, who were alleged by the plaintiffs to be the *Inamdars* of the land, and to have no *miras* rights therein, the objection that the plaintiffs had not received a proper or any notice to quit, not being among the objections in the memorandum of special appeal, the Court declined to permit it to be raised at the hearing of the special appeal. BABAJI *v.* NARAYAN. *Westropp*, C J., and *West*, J.....**I. L. Rep. 3 Bom. 340, 1879.**

S. C. under **Construction of Sanad. 2**, and **Miras. 1.**

PRACTICE—CRIMINAL — Appeal—Presentation of.

See **Appeal—Criminal. 1.**

In the matter of SUBBA AITALA. **I. L. Rep. 1 Mad. 304.**

—— Committal after Charge drawn up.

See **Criminal Procedure Code, Act X. of 1872, §§ 220, 221.**

EMPRESS *v.* KUDRUTOOLAH...**I. L. Rep. 3 Cal. 495.**

—— Separate Charges for Distinct Offences.

See **Criminal Procedure Code, Act X. of 1872, §§ 453, 454.**

EMPRESS *v.* DONONJOY BARAJ.....**I. L. Rep. 3 Cal. 540.**

PRACTICE—CRIMINAL—*contd.*

—— *Criminal Procedure Code, Act X. of 1872, §§ 218 and 351 – Right of Accused to recall and cross-examine Witnesses for Prosecution—Power of Magistrate to record evidence after Defence closed.*] *Per Spankie*, J.—The plain meaning and intention of § 218 of the Criminal Procedure Code (Act X. of 1872) is to allow the accused person the right to re-call and cross-examine the witnesses for the prosecution at any time while he is engaged in his defence, and before his trial is concluded. The object of the section is clearly to secure the accused the opportunity of cross-examining the witnesses for the prosecution after he has been informed as to the nature of the specific charge which he is required to answer. If this opportunity be secured, he has no further right of recalling the witnesses. If the witnesses for the defence are in attendance, they are to be examined, and after that the accused shall be allowed to recall and cross-examine the witnesses for the prosecution. But if the witnesses for the defence are not in attendance, the accused would still be at liberty to recall the witnesses for the prosecution. If he refuses to exercise this right *after he has entered on his defence*, he cannot demand as a right the recall of the witnesses for the prosecution, if the case be adjourned because he has not produced his witnesses. He has had the opporunity intended by the section.

Where, therefore, a Magistrate, after hearing the defence of an accused person made on the charges being read to him, offered the accused's pleader an opportunity of cross-examining the witnesses for the prosecution, which the pleader refused, saying that he would apply to the Court after he had examined his own witnesses, who were not then in attendance, and the Magistrate held that he could not do this, and the case being adjourned for the production of the witnesses for the defence, discharged the witnesses for the prosecution :—*Spankie*, J., *held*, that the accused could not demand as of right to have them recalled for cross-examination.

Held also, *per Spankie*, J., that § 351 of the Criminal Procedure Code (Act X. of 1872), which gives the Magistrate power to summon any witness at any stage of any proceeding, inquiry, or trial, if the evidence of such person appears essential to the just decision of the case, empowers a Magistrate to record evidence, both oral and documentary, after the case for

Digitized by Google

PRACTICE—CRIMINAL—*contd.*

the defence has been closed. EMPRESS *v.* BALDEO SAHAI.....I. L. Rep. 2 All. 253, 1879.

S. C. under **Attempt. 2.**

PRACTICE AND PROCEDURE IN SUITS PENDING AT DATE OF ENACTMENT OF THE CIVIL PROCEDURE CODE, ACT X. OF 1877—Suit referred to Commissioner to take Account.

See **Civil Procedure Code, Act X. of 1877, § 3.**

RUSTOMJI *v.* KESSOWJI.....I. L. Rep. 3 Bom. 161.

PRACTICE—PRIVY COUNCIL.

—— Appeal Heard *Ex-Parte*, Rehearing of.

See **Practice—Privy Council. 4.**

—— Concurrent Judgments on Facts.

See **Practice—Privy Council. 1. 2.**

—— Cross-Appeal when Unnecessary.

See **Practice—Privy Council. 3.**

—— Leave to Appeal granted in India *Ultra Vires.*

See **Practice—Civil. 1.**

—— Misstatement in Petition for Special Leave to Appeal.

See **Beng. Reg. VIII. of 1819, § 8, Cl. 2. 1.**

—— Objections not Raised in Courts Below.

See **Practice—Civil. 2.**

—— Special Leave to Appeal.

See **Practice—Privy Council. 5 to 9.**

1. —— *Concurrent Finding on Facts—Privy Council.*] The Judicial Committee will not disturb the concurrrent findings of two lower Courts on a question of fact. MANNOO LALL *v.* BALL CHOONEE LALL. .....L. Rep. 1 I. A. 44.

S. C. under **Estoppel. 1.**

2. ——But the rule of the Judicial Committee of the Privy Council, not to allow the concurrent judgments of two Courts on a question of fact to be disputed, may be relaxed in a case where the question of fact is closely mixed up with questions of law. PAULIEM VALOO CHETTY *v.* PAULIEM SOORYAH CHETTY...L. Rep. 4 I. A. 109; I. L. Rep. 1 Mad. 252, 1877.

S. C. under **Hindu Law—Self-Acquired Property.**

3. —— *Question of Law referred to Full Bench—Right of Respondent without Cross-Appeal to question Correctness of Answers.*] Where a Division Bench of a High Court refers a question of law for the consideration of the Full Bench, and the answer of the Full Bench is not framed as a decree or as an interlocutory order, and an appeal is brought to Her Majesty in Council, it is open to the respondent, without a cross-appeal, to object to the correctness of the answer given by the Full Bench on the question of law reserved. MUSSUMAT PHOOLBAS KOONWAR *v.* LALLA JOGESHUR SAHOY...L. Rep. 3 I. A. 7; I. L. Rep. 1 Cal. 226.

S. C. under **Hindu Law—Alienation of Ancestral Property. 3.**

4. —— *Petition—Appeal heard* ex parte—*Re-hearing.*] A respondent, who has been properly made a party to the suit in the Courts below, and is bound by the proceedings therein, but who has not entered an appearance as respondent to the appeal to Her Majesty in Council, or authorized any person to do so for him (the appellant having failed to take the usual steps against him in order either to compel his appearance, or to have the appeal regularly heard *ex parte* against him), is not entitled to have a re-hearing of the appeal, unless by some accident, without any blame and without any default on his part, he has not been heard, and an order has been inadvertently made as if he had been heard.

Rajundernarain Rae v. *Bijai Govind Singh* (1 Moo. P. C. Cases 117) and *ex parte Kistonnauth Roy* (L. Rep. 2 P. C. 274) approved.

Where it appeared that a respondent had full knowledge of the pendency of the appeal, and had furnished funds for defending it in the name of another respondent thereto, a re-hearing was refused.

An issue whether or not the respondent had been properly made a party to the suit in the Courts below, and whether or not the proceedings in India, so far as he was concerned were *coram non judice*, can only be tried in a new suit in the Courts below; and *quære* whether in such a suit he would be barred by an order in

Digitized by Google

PRACTICE—PRIVY COUNCIL—*contd.*

Council if made on an appeal from a decree by which he was not bound. MAHARAJAH PERTAB NARAIN SINGH *v.* MAHARANEE SUBHAO KOER ..... **L. Rep. 5 I. A. 171, 1878.**

5. —— *Special Leave to appeal—Suspension of Pleader.*] On an application for special leave to appeal against an order made by the High Court suspending a pleader, presented after the expiration of the time of suspension :—Sir J. Colville, delivering the judgment of the Judicial Committee, said that the fact of the expiration of the period of suspension was of itself some ground for refusing the application ; but that their Lordships did not say that if the effect of the order had been to inflict a lasting stigma on the pleader's character, and there had been a clear miscarriage of justice shown, the fact that the period of suspension had expired would have induced them to refuse the application. But their Lordships not being satisfied, from the materials before them, that the High Court's conclusion on a pure question of fact in a matter where they were acting regularly within their jurisdiction was wrong, refused to grant special leave to appeal. *In the matter of* QUARRY...**I. L. Rep. 2 All. 511, 1879 ; L. Rep. 7 I. A. 6.**

6. —— *Consolidated Suit — Valuation.*] Special leave to appeal granted in a suit which had been consolidated by consent of both parties. Where defendant in such consolidated suit had taken the values at the rate fixed in the plaint, which together exceedeed Rs. 10,000, and had obtained the benefit of an appeal to the High Court upon the facts by so adopting that valuation :—

Held, that the defendant could not afterwards object to that valuation, and that leave to appeal to Her Majesty in Council should not have been refused on the ground of value. KRISTO INDO SAHA *v.* HURMONEE DASSEE...**L. Rep. 1 I. A. 84, 1873.**

7. —— *Re-opening Case—Application at Hearing.*] Rule against special leave to re-open the whole case, when application is made for the first time at the hearing of the appeal. THAKUR DARRIAO SINGH *v.* THAKUR DAVI SINGH .....**L. Rep. 1 I. A. 1.**

8. —— *Zillah Judge reviewing Refusal to Register—Act VIII. of* 1871.] Special leave to appeal granted to try the question whether

PRACTICE—PRIVY COUNCIL—*contd.*

under the Indian Registration Act (VIII. of 1871), a Zillah Judge can review an order of his own Court refusing to register a document. MEER REASUT HOOSEIN *v.* HADJEE ABDOOLLAH. **L. Rep. 1 I. A. 72, 1873.**

For the further stages of this case, *see* **Review. 8.**

L. Rep. 3 I. A. 221 ; I. L. Rep. 2 Cal. 131.

9. —— *Objection to Decree as Declaratory precluded, Special Leave having been granted on other Ground.*] Although it is not an invariable rule that no questions can be raised at the hearing which are not indicated in the petition for special leave to appeal, yet where special leave has been obtained on the ground that important questions affecting a large community were involved in the decision sought to be appealed from, the appellant was *held* to be precluded from objecting to the decree on the ground of its being declaratory only. SHEO SINGH RAI *v.* MUSSUMUT DAKHO.....**L. Rep. 5 I. A. 87, 1878 ; I. L. Rep. 1 All. 688 ; 2 Cal. Rep. 198.**

S. C. under **Declaratory Decree. 11,** and **Jain Law. 2.**

PRECATORY TRUST IN WILL—Bequest to Wife "feeling confident that she would act justly to their children in dividing the same when no longer required by her."

See **Will. 6.**

RAYNOR *v.* THE MUSSOORIE BANK. **I. L. Rep. 2 All. 55.**

PRE-EMPTION—Claim by Agent—Refusal to purchase before Sale.

See **Mahomedan Law—Pre-emption. 2.**

ABADI BEGUM *v.* IMAM BEGUM ...**I. L. Rep. 1 All. 521.**

—— Coparcener has no Right of—as against Coparceners.

See **Mahomedan Law—Pre-emption. 1.**

LALLA NOWBUT *v.* LALLA JEWAN. **I. L. Rep. 4 Cal. 831.**

See infra. **2.**

—— Conditional Decree.

See infra. **3. 4. 8.**

Digitized by Google

PRE-EMPTION—*contd.*

—— Hindu Vendor.

See infra. **11.**

—— Hindu Widow's Right of.

See infra. **9.**

—— Limitation to Suit to enforce a Right of.

See infra. **5. 6.**

See **Limitation. 29. 49. 50. 92.**

—— Pattidari Estate—Sale of, in Execution of Decree of Revenue Court.

See infra. **1.**

—— Pattidari Estate—Sale of—Co-Sharers—Strangers.

See infra. **2.**

—— Sale of Dwelling-House for Occupation, without Site.

See **Mahomedan Law—Pre-emption. 3.**

ZAHUR *v.* NUR ALI.....**I. L. Rep. 2 All. 99.**

—— Suit for.

See **Amendment of Plaint. 1.**

DURGA PRASAD *v.* NAWAZISH ALI.. **I. L. Rep. 1 All. 591.**

1. —— *Act XXIII. of* 1861, § 14—*Pattidari Estate—Act XVIII. of* 1873, § 177—*Act XIX. of* 1873, § 188.] The provisions of § 14 of Act XXIII. of 1861 do not apply where the land is sold in execution of a decree of a Revenue Court.

Held, on the assumption that where land is sold in execution of such a decree a claim to the right of pre-emption can be preferred, under the provisions of § 177 of Act XVIII. of 1873 and § 188 of Act XIX. of 1873, that such claim can only be preferred when the land is a patti of a mahal, not when it is part only of a patti of a mahal.

Semble, that where land which is a patti of a mahal is sold in execution of such a decree, a claim to the right of pre-emption can be preferred, under the provisions of § 177 of Act XVIII. of 1873 and § 188 of Act XIX. of 1873. NARAIN SINGH *v.* MUHAMMUD FARUCK. *Spankie* and *Oldfield*, JJ. **I. L. Rep. 1 All. 277, 1876.**

2. —— *Act XXIII. of* 1861, § 14—*Pattidari Estate — Co-Sharer — Stranger.*] The right of pre-emption can only be asserted against a stranger, *i.e.*, one who is not a co-sharer or a member of the coparcenery. A sharer in one of the pattis in a pattidari estate is not a stranger with reference to the co-sharers in another patti within the meaning of § 14 of Act XXIII. of 1861, which gives no preferential rights of pre-emption among themselves between co-sharers in the same patti and sharers in other pattis. The auction purchaser, at a sale in execution of a decree, of a share in a pattidari estate, seeking to establish his right as against a person whose claim to the right of pre-emption, under the provisions of § 14 of Act XXIII. of 1861, has been allowed, and in whose favour the sale has been confirmed, cannot maintain a suit for possession of the share, but should sue for a declaration that the person claiming the right of pre-emption has no such right, and to set aside the sale. FARZAND ALI *v.* ALIMULLAH. *Stuart*, C.J., and *Oldfield*, J...**I. L. Rep. 1 All. 272, 1876.**

3. —— *Conditional Decree—Final Decree.*] Where the plaintiff in a suit for pre-emption was granted a decree subject to the payment of the purchase money within a fixed period, and failed to comply with the condition imposed on him by the decree:—

Held, that he had lost the benefit of the decree.

When a direction contained in a decree referred to the time at which such decree should become *final*:—

Held, that it became final on being affirmed by the lower Appellate Court, where, although a special appeal was preferred by the plaintiff against the decree of the lower Appellate Court, the same was subsequently allowed to be withdrawn. *Sheikh Ewaz* v. *Mokuna Bibi* (I. L. Rep. 1 All. 132) distinguished. HINGAN KHAN *v.* GANGA PARSHAD...*Stuart*, C.J.. and *Oldfield*, J.....**I. L. Rep. 1 All. 293, 1876.**

See **8**, *infra.*

4. —— *Conditional Decree.*] Where a share in a certain patti was sold by the holder of the share to a stranger, and three persons holding equal shares in the patti were equally entitled under the village administration paper to the right of pre-emption of the share:—

Held, that such persons were each entitled to have the sale made to him to the extent of one-third of the share. The decree of the High Court in this suit specified a time within which each party to the suit should pay into Court a

Digitized by Google

PRE-EMPTION—*contd.*

proportion of the purchase money, and declared that if either failed to pay such proportion within time, the other of them making the further deposit within time should be entitled to the share of the defaulter. MAHABIB PARSHAD *v.* DEBI DIAL. *Turner* and *Spankie*, JJ...**I. L. Rep. 1 All. 291, 1876.**

5. —— *Minor—Legal Disability—Act IX. of* 1871, § 7—*Custom.*] In a suit by a co-sharer in a village, instituted on the 23rd July 1875, to enforce his right of pre-emption, under a condition for pre-emption contained in the village administration paper, in respect of a share sold to the defendants on the 17th of January 1870, while the plaintiff was a minor, it appeared that the plaintiff had no legally constituted guardian at the date of the sale; that the share was not offered to him or any one on his behalf, nor did he or or any one on his behalf assert a right of pre-emption at the time of sale. The plaintiff came of age in October 1874. The condition in the village administration paper, or record of rights, was as follows :—" Every co-sharer is to the extent of his possession at liberty to alienate his share by sale or mortgage, but at the time of alienation there is this condition, that whosoever desires to alienate his share, first of all the nearest co-sharer will be entitled to it, and in the event of his refusal it shall be transferred to the other co-sharers in the other *thoke*, and when all have refused or do not give the proper price, then a transfer may be made to a stranger, and after that the right of alienation shall belong to no co-sharer" :—

Held, that the plaintiff having brought his suit within a year from the date on which he attained his majority, was not barred by limitation from enforcing his claim.

Held also, that though under the Mahomedan law, immediate demand is essential to the enforcement of a right of pre-emption, yet the formalities requisite under that law do not apply to rights of pre-emption created by contract, unless it appear that it was the intention of the parties to attach to the exercise of the right the same formalities as are required by Mahomedan law. In all cases in which the right is asserted as based on a stipulation entered in the record of rights, the terms of the stipulation must be regarded, and those conditions only imposed which the language of the stipulation warrants.

PRE-EMPTION—*contd.*

There was nothing in the language of the stipulation in this case to show that the formalities of the Mahomedan law were attached to the right of pre-emption, nor that the right, if it accrued, would be forfeited if it were asserted at any time within the period allowed by the law of limitation. But upon the true construction of the condition, the co-sharers in whose favour it was created were to be persons who were competent at the time of the sale, the time when the condition was to take effect, to make a binding contract to accept or refuse the offer; and therefore the seller of the share was not bound to make the offer to the plaintiff, nor could the sale be invalidated by reason of the absence of proof of refusal on his part.

Held also, that assuming the clause in the record of rights to be a record of custom, the Court would still be at liberty to collect its incidents from the terms in which it is recorded. And if the clause were merely the record of a custom, and if its language were ambiguous, as a custom to be a good custom must be reasonable, the Court could not hold a custom reasonable which allowed the validity of transfers of property to remain for an indefinite time in suspense. RAJA RAM *v.* BANSI. *Pearson* and *Turner*, JJ...**I. L. Rep. 1 All. 207, 1876.**

6.——*Limitation Act IX. of* 1871, *Sched. II., Art.* 10.] In a suit brought on the 5th October 1874, to enforce a right of pre-emption founded on a contract in the village administration paper, impeaching a deed of sale dated the 15th of September 1873, (at which date the property was in the possession of an usufructuary mortgagee,) which recited that the vendees were entitled to possession on the 31st of May 1874, by redemption of the mortgage :—

Held by the majority of the Full Bench, that the suit was barred by the limitation prescribed in Art. 10 of Sched: II., Act IX. of 1871. Full effect is given to the term actual possession in that article, by holding that where the nature of the subject of the sale admits of visible and tangible possession, limitation will run from the period when tangible possession is taken, but that when the nature of the subject of the sale does not admit of tangible possession, limitation runs from the date when the subject of the sale is completely conveyed to and vested in the purchaser, and he has acquired such possession as before the sale was enjoyed by the seller.

Digitized by Google

PRE-EMPTION—*contd.*

By *Stuart*, C. J.—The possession intended by Art. 10, Sched. II., of Act IX. of 1871 was possession by enjoyment of the profits on expiry of the term of the mortgage. Actual possession means personal and immediate enjoyment of the profits, and as the mortgagee was in possession at the time of sale, the purchaser could not take actual possession till the mortgage term had expired. JOGESHAR SINGH *v.* JAWAHIR SINGH... **I. L. Rep. 1 All. 311, 1876, F. B.**

7. —— *Mahomedan Law—Act VI. of* 1871, § 24.] The right of pre-emption according to Mahomedan law is not a strong right, and any one claiming it must be held bound by the conditions of Mahomedan law, and should promptly assert his right of pre-emption by the immediate demand. The "*talab-i-mawasabat*," or immediate demand, should be made, when a person entitled to pre-emption has heard of a sale, on the instant, whether there is any one by him or not, and when he remains silent without claiming the right it is lost.

Where the plaintiff failed to make such demand until twelve hours after the sale became known to him, he was *held* to have lost his right of pre-emption. ALI MUHAMMAD *v.* TAJ MUHAMMAD. *Stuart*, C. J., and *Spankie*, J. **I. L. Rep. 1 All. 283. 1876.**

8. —— *Conditional Decree—Final Decree.*] The Court granting a decree to the plaintiff in a pre-emption suit is competent to grant the decree subject to the payment of the purchase money within a fixed period, and if the decree-holder fails to comply with the condition imposed on him by the decree, he loses the benefit of the decree. *Sheo Pershad Lall* v. *Thakoor Rai* (H. C. Rep. N. W. P. 1868, p. 254) followed.

Where the direction in the decree referred to the time at which such decree should become final:—*Held* (the case being one in which a special appeal lay), that such decree did not become final on being affirmed by the lower Appellate Court, but on the expiry of the period of special appeal, or where such special appeal was instituted, when it became final by the decree of the High Court. SHAIKH EWAZ *v.* MOKUNA BIBI. *Spankie* and *Oldfield*, JJ...**I. L. Rep. 1 All. 132, 1876.**

See **8**, *supra.*

9.——*Hindu Widow's Right of.*] A Hindu widow holding by inheritance her husband's share in a village, fully represents the estate, and can claim to exercise all rights which would attach to it in the hands of a male owner, including a right of pre-emption, under a condition in the village administration paper. The circumstance that the widow lived with the vendors would not deprive her of her right, where the claim is not collusive. PHULMAN RAI *v.* DANI KUARI. *Pearson* and *Turner*, JJ...**I. L. Rep. 1 All. 452, 1877.**

10. —— Wajib-ul-Arz—*Custom—Authority of Lessee to bind Owner by attesting Administration Paper.*] In a suit to enforce a right of pre-emption based on the village administration papers of a current settlement, where it appeared that neither the defendant's vendor, nor any one he represented, was a party to the execution of the village administration papers or knowingly accepted their conditions:—

Held, that the plaintiff's claim could not be established, nor could the fact that a similar condition of pre-emption was entered in the previous administration paper, affect the present claim, which was brought on the contract under the recent administration paper and not on any well-established custom apart from the contract made under the administration paper, nor would the entry of the right of pre-emption in a former administration paper necessarily establish, though it might be evidence, towards proving, such a custom.

A lessee of the owner of an estate has not authority, merely as such lessee, to bind the owner at a settlement by a condition of pre-emption in the village administration paper by attesting it. CHADAMI LAL *v.* MUHAMAD BAKSH. *Pearson* and *Oldfield*, JJ.....**I. L. Rep. 1 All. 563, 1878.**

11.—— *Mahomedan Law—Hindu Vendor.*] *Held* (*Stuart*, C.J., and *Pearson*, J., dissenting), that where the vendor of a property is a Hindu, a suit to enforce a right of pre-emption founded on Mahomedan law only, and not on any custom or special agreement is not maintainable, though both the purchaser and the pre-emptor may be Mahomedans. *Chundo* v. *Alim-ud-din* (H. C. Rep. N. W. P. 1874, p. 28) dissented from. *Poorno Singh* v. *Hurrychurn Surmah* (10 Beng. L. Rep., 17) followed. DWARKA DAS *v.* HUSAIN BAKSH...**I. L. Rep. 1 All. 564, 1878, F.B.**

12. —— *Contract — Mahomedan Law—Custom—Special Appeal.*] Where the existence

Digitized by Google

PRE-EMPTION—*contd.*

in a certain village of the right of pre-emption was recorded in the village administration paper as a matter of agreement and not of custom, and a suit was brought to enforce such right founded on the agreement, and was tried and determined in the lower Courts as so founded, the plaintiff cannot in special appeal claim such right as a matter of custom in virtue of such entry.

A claim to the right of pre-emption founded on a special agreement does not exclude a claim advanced at the same time to such right founded on Mahomedan law. MARATIB ALI *v.* ABDUL HAKIM. *Stuart*, C.J., and *Turner*, J. **I. L. Rep. 1 All. 567, 1878.**

PRE-EMPTION SUIT—Costs as between Party and Party—Pleader's Fees.

See **Pleader's Fees.**

DEBI SINGH *v.* BHUP SINGH...**I. L. Rep. 1 All. 709.**

PRELIMINARY INQUIRY.

See **Criminal Procedure Code, Act X. of 1872, § 471. 2.**

REG. *v.* BAIJOO LALL...**I. L. Rep. 1 Cal. 450.**

PRELIMINARY OBJECTION—AS TO MATERIAL MISSTATEMENT IN PETITION FOR SPECIAL LEAVE TO APPEAL—PRACTICE.

See **Bengal Reg. VIII. of 1819, § 8, Cl. 2.**

RAM SABUK BOSE *v.* MONMOHINEE DOSSEE... **L. Rep. 2 I. A. 71.**

PRELIMINARY OBJECTION—AS TO WANT OF AUTHORITY OF COURT IN INDIA TO GRANT LEAVE TO APPEAL.

See **Practice—Civil. 1.**

GAJADHAR PERSAD *v.* THE TWO WIDOWS OF EMAM ALI BEG .. **I. L. Rep. 2 I. A. 205.**

PREROGATIVE OF THE CROWN—To Cede Territory.

See **Cession of Territory. 1. 2.**

LACHMI NARRAIN *v.* RAJA PERTAB SINGH...**I. L. Rep. 2 All. 1.**

DAMODHAR *v.* DEORAM...**L. Rep. 3 I. A. 102; I. L. Rep. 1 Bom. 367; L. Rep. 1 App. Ca. 332.**

PREROGATIVE OF THE CROWN—*contd.*

—— Court Fees—Pauper Suit.

See **Civil Procedure Code, Act VIII. of 1859, § 309. 1. 2.**

GANPAT PUTAYA *v.* COLLECTOR OF KANARA.....**I. L. Rep. 1 Bom. 7.**

GULZARI LAL *v.* COLLECTOR OF BAREILLY...**I. L. Rep. 1 All. 596.**

See **Prerogative of the Crown.**

—— Escheat.

See **Escheat.**

RANEE SONWET KONWAR *v.* MIRZA HIMMUT BAHADOOR.....**L. Rep. 3 I. A 92; I. L. Rep. 1 Cal. 391.**

—— *Pauper Suit—Court Fees—Act VIII. of* 1859, § 309—*Sale in Execution—Distribution of Proceeds.*] With a view to recover the amount of Court fees which *J.* would have had to pay, had he not been permitted to sue as a pauper, the Government caused certain property belonging to *B.*, the defendant in such suit, who had been ordered by the decree in such suit to pay such amount, to be attached. This property was subsequently attached by the holder of a decree against *B.* which declared a lien on the property created by a bond. The property was sold in execution of this decree:—*Held*, that the Government was entitled to be paid first, out of the proceeds of such sale, the amount of the Court fees *J.* would have had to pay had he not been allowed to sue as a pauper. The principle that the Government takes precedence of all other creditors is not liable to an exception in the case of lien-holders. The decision in *Ganpat Putaya* v. *The Collector of Kanara* (I. L. Rep. 1 Bom. 7) applied in this case. THE COLLECTOR OF MORADABAD *v.* MUHAMMAD DAIM KHAN. *Pearson* and *Spankie*, JJ...**I. L. Rep. 2 All. 196, 1879.**

PRESCRIPTION—Acquisition of Proprietary Right to Land by.

See **Bombay Act I. of 1865, § 35.**

COLLECTOR OF THANA *v.* DADABHAI BOMANJI...**I. L. Rep. 1 Bom. 352.**

—— Easement.

See **Easement. 1. 2. 3.**

SHAM CHURN *v.* TARINNY CHURN... **I. L. Rep. 1 Cal. 422.**

Digitized by Google

PRESCRIPTION—*contd.*

MOHANLAL *v.* AMRATLAL.....**I. L. Rep. 3 Bom. 174.**

SUBRAMANIYA *v.* RAMACHANDRA...**I. L. Rep. 1 Mad. 335.**

1. —— *Reg. V. of* 1827, § 1, *Cl.* 1—*Suit for Share in Ancestral Property.*] The plaintiff brought a suit in 1873 to obtain a share in ancestral property in the possession of the defendant, whom the plaintiff alleged to be united with him in estate. The plaintiff admitted that he had lived separate from the defendant for forty years before the institution of the suit, and had not during that time received any portion of the profits or produce of the ancestral estate. The defendant pleaded limitation. Both the lower Courts held that the suit was governed by Act IX. of 1871, Sched. II., Art. 127, and decreed in favour of the defendant, on the ground that no demand by the plaintiff of his share, and refusal to comply therewith, had been proved.

Held, that the defendant had acquired a prescriptive title, under Reg. V. of 1827, § 1, Cl. 1, in the immoveable estate, the subject of the suit, by his uninterrupted possession as proprietor for more than thirty years previously to the passing or coming into force of Act IX. of 1871. The effect of Reg. V. of 1827, § 1, Cl. 1, was not merely to bar the plaintiff's remedy, but to take away his right.

The repeal of a statute or other legislative enactment cannot, without express words, or clear implication to that effect, in the repealing Act, take away a right acquired under the repealed statute or other enactment while it was in force.

Act IX. of 1871, though it repealed Reg. V. of 1827, did not affect any prescriptive right or title which had, under Ch. I., § 1, of that Regulation, been acquired by any possession of immoveable property before Act IX. of 1871 was passed, inasmuch as neither by express words nor by clear implication does there appear any intention on the part of the Legislature to take away any such right or title. SITARAM VASUDEV *v.* KHANDERAV BALKRISHNA. *Westropp*, C. J., and *Melvill*, J...**I. L. Rep. 1 Bom. 286. 1876.**

2. —— *Adverse Possession — Reg. V. of* 1827—*Act XIV. of* 1859.] Some lands in the village of Shirasgaum, in the Puna Collectorate, known as "Kolhati Bawa's Inam," originally belonged to H. H. Scindia. Plaintiff's family

PRESCRIPTION—*contd.*

were proved to have been in actual possession of them from 1841 to 1854, and in constructive possession during their attachment by the Inam Commissioner from 1854 to 1863, when, by a mistake in carrying out the orders of the British Government, the lands passed into the possession of Scindia, and remained with His Highness till 1872, in which year the British Government, by exchange of lands, came into possession. In a suit brought on the 29th July 1872 (*i.e.*, before Act IX of 1871 came into force, and while Reg. V. of 1827 and Act XIV. of 1859 were in force) to recover the lands :—

Held, Regulation V. of 1827, § 1, (providing thirty years as the period within which a suit for immoveable property might be brought, and as the period adverse possession during which was conclusive proof of proprietary right in the possessor, except in cases of fraud,) was the law both of limitation and prescription in the Bombay Presidency until the passing of Act XIV. of 1859. That Act, by implication, repealed Regulation V. of 1827, § 1, so far as it was a law of limitation, but left it untouched so far as it was a law of positive prescription.

Therefore, until Regulation V. of 1827, § 1, was repealed by Act IX. of 1871 on 1st April 1873, though a person, who without title had been in adverse possession of immoveable property for twelve years could, under § 1, Cl. 12, of Act XIV. of 1859, resist a suit brought to recover it from him, he did not acquire a prescriptive title to it by possession short of thirty years. Act XIV. of 1859 did not extinguish the proprietor's right, but only barred his remedy, against the person in adverse possession.

Accordingly, if such person lost his possession and the proprietor regained it, the former, unless he sued within six months, under § 15 of Act XIV. of 1859, must fail in a suit to eject the latter, having no title to stand upon.

The plaintiff, therefore, by his possession from 1841 to 1863, had not acquired a prescriptive title, under Regulation V. of 1827, § 1, and, having failed to sue for more than six months, had lost the benefit of his previous possession, and had failed to establish his title to recover possession. RAMBHAT AGNIHOTRI *v.* THE COLLECTOR OF PUNA. *Kemball* and *N. Harridas*, JJ.....**I. L. Rep. 1 Bom. 592, 1876.**

Digitized by Google

PRESCRIPTIVE RIGHT — To Maintain Bunds.

See **Maintenance of Bund.**

RAM LALL *v.* LILL DHARY...**I. L. Rep. 3 Cal. 776.**

PRESENTATION OF CRIMINAL APPEAL.

See **Appeal—Criminal. 1.**

In the matter of SUBBA AITALA... **I. L. Rep. 1 Mad. 304.**

PRESENTATION OF PLAINT—On Day on which Court should have re-opened after Vacation.

See **Limitation. 6. 13.**

BISHAN CHAND *v.* AHMAD KHAN .. **I. L. Rep. 1 All. 263.**

PURRAN C. GHOSE *v.* MUTTY LALL...**I. L. Rep. 4 Cal. 50.**

PRESIDENCY BANKS ACT XI. OF 1876—§§ 17 *and* 21—*Registration of Transfer —Right of Bank to refuse to register Transfer.*] The Bank of Bengal is entitled to refuse to register a transfer of shares when the application is made during the time the transfer books of the Bank are closed under the powers given by § 21 of Act IX. of 1876, and after a public notification in accordance therewith. Though the Bank may not have given this reason for refusing to register at the time of the application being made, they are entitled to avail themselves of it subsequently, when a suit is brought to compel them to register the transfer.

Section 17 of Act XI. of 1876, which entitles the Bank of Bengal to refuse to register the transfer of shares until payment of any debts due by the person in whose name the shares stand, refers only to debts which are presently payable; therefore, where *R.* was indebted to the Bank, and gave bills as security therefor:—

Held, that the Bank would not be entitled to refuse, under § 17, to register a transfer by *B.* of his shares during the currency of the bills. MOTHOORMOHUN ROY *v.* BANK OF BENGAL. *Garth*, C. J., and *Markby*, J ..**I. L. Rep. 3 Cal 392; 1 Cal. Rep. 507, 1878.**

PRESIDENCY MAGISTRATES' ACT IV. OF 1877—§ 39—Public Servant—Sanction of Government.

See **Municipal Commissioner.**

EMPRESS *v.* MUNICIPAL CORPORATION OF CALCUTTA...**I. L. Rep. 3 Cal. 758.**

PRESIDENCY MAGISTRATES' ACT IV. OF 1877—*contd.*

—— § 41 — *Appeal.*] No appeal lies from the order of a Judge granting leave to prosecute under § 41 of Act IV. of 1877, such leave not being a judgment within the meaning of Cl. 15 of the Charter. *In the matter of the Petition of* JANOKEY NATH ROY. *Garth*, C. J., and *Markby*, J.....**I. L. Rep. 2 Cal. 466, 1877.**

—— § 167 — *Appeal — Sentence.*] The words "to imprisonment for a term exceeding six months, or to fine exceeding Rs. 200," in § 167 of the Presidency Magistrates' Act (IV. of 1877) are confined in their meaning to substantive sentences, and cannot be extended to include an award of imprisonment in default of payment of fine, the operation of which is contingent only on the fine not being paid. *In the matter of* JOTHARAM DAVAY. *Innes* and *Muttusami Ayyar*, JJ.....**I. L. Rep. 2 Mad. 30, 1878.**

S. C. under **Housebreaking.**

PRESUMPTION OF DEATH—Hindu and Mahomedan Law as to—Suit by Reversioner.

See **Evidence. 21.**

PARMESHAR RAI *v.* BISHESHAR SINGH ..**I. L. Rep. 1 All. 53.**

PRESUMPTION AS TO DOCUMENTS MORE THAN THIRTY YEARS OLD — Execution presumed, but no Authority to execute for another.

See **Evidence. 17.**

UBILACH RAI *v.* DALLIAL RAI...**I. L. Rep. 3 Cal. 557.**

PRESUMPTION OF MARRIAGE.

See **Mahomedan Law. 2.**

RANEE KHUJOOROONISSA *v.* MUSST. ROUSHUN JEHAN...**L. Rep. 3 I. A. 291; I. L. Rep. 2 Cal. 184.**

PRESUMPTION IN FAVOUR OF MOKURARI TENURES — Claim by Purchaser at Revenue Sale to enhance Rent.

See **Enhancement of Rent. 1.**

PURMANUND *v.* ROOKINEE...**I. L. Rep. 4 Cal. 793.**

Digitized by Google

PRESUMPTION OF OWNERSHIP OF SITE OF ROAD.

See **Ownership of Site of Road.**

MOBARUCK SHAH *v.* TOOFANY...**I. L. Rep. 4 Cal. 206.**

PRESUMPTION OF RIGHT TO SCOUR WATERCOURSE.

See **Artificial Watercourse.**

RAMESHUR PERSAD *v* KOONJ BEHARI...**L. Rep. 6 I. A. 33; I. L. Rep. 4 Cal. 633.**

PRESUMPTION AS TO TITLE TO SOIL OF PRIVATE OCCUPATION ROAD.

See **Title to Soil of Road.**

SHAM CHURN *v.* TARINEY CHURN.. **I. L. Rep. 1 Cal. 422, 428.**

PREVIOUS CONVICTION—Sentence.

See **Penal Code, § 75.**

EMPRESS *v.* MEGHA ..**I. L. Rep. 1 All. 637.**

PRIMOGENITURE.

See **Hindu Law — Inheritance—Primogeniture.**

CHOWDHRY CHINTAMAN SINGH *v.* MUSST. NOWLUKHO KONWARI **L. Rep. 2 I. A. 263; I. L. Rep. 1 Cal. 153.**

PRINCIPAL AND AGENT—Authority of Agent to bind Principal by compounding Criminal Charge against Agent.

See **Duress.**

MOUNG SHOAY ATT *v.* KO BYAW... **L. Rep. 3 I. A. 61; I. L. Rep. 1 Cal. 330.**

—— Mutual Accounts—Limitation.

See **Limitation. 34.**

WATSON *v.* AGA MEHEDEE SHERAZEE...**L. Rep. 1 I. A. 346.**

1. —— *Liability of Master for Wrongful Act of his Servant.*] In an action to recover damages from the defendants for obstructing the plaintiff's right of ingress and egress to a forest, and his right of obtaining and removing timber therefrom, *held*, on the evidence, that the obstruction was not caused by the persons who were agents of the defendants for the purpose of working in the forest, or doing any class of acts analogous to those complained of,

PRINCIPAL AND AGENT—*contd.*

and that the defendants were not shown to have knowingly adopted or ratified those acts, and that the acts were not shown to have been committed for their benefit.

A principal is answerable for the acts of his agent in the course of his master's business and for his master's benefit, and for every such wrong of the servant or agent as is committed in the course of the service and for the master's benefit. Though the master may not have authorized the act, if he has put the agent in his place to do a particular class of acts, he must be answerable for the manner in which that agent has conducted himself in doing the business which it was the act of his master to place him in. BOMBAY BURMAH TRADING COMPANY, LIMITED, *v.* MIRZA MAHOMED ALLY SHERAZEE.....**L. Rep. 5 I. A. 130, 1878; I. L. Rep. 4 Cal. 116.**

S. C. under **Damages. 4.**

2. —— *Guarantor — Custom — Liability*] In a suit to recover Rs. 14,000, which the plaintiffs alleged that they had paid as guarantors of the defendant, being the loss sustained by his vendors in consequence of the fall of the price of certain cotton sold, it appeared that, by a local custom, the defendant, as a stranger to the locality of *N.*, could only trade through a resident merchant, the name of whom is by the custom entered as principal in the transaction, to whom the credit is given, and with whom the final settlement of the transaction is effected, as the "arath" of such stranger; that the defendant made extensive transactions in *N.* through the plaintiffs, representing them as his "araths," and delivered to them "pauris," or memoranda of the transactions, according to the custom; that in respect of the transaction in question the defendant did not deliver to the plaintiff a "pauri" (though he had made use of their name), and that the plaintiff had represented to the vendors that, not holding a "pauri," they could not render themselves responsible; but that on reference to a panchayet, it was decided that the plaintiffs ought to pay, and they did pay, the said Rs. 14,000 to the vendors:—

Held, that the defendant was liable. He had the authority of the plaintiffs to use their name, had so used it with their concurrence, and had thereby authorized the payment as aforesaid by the plaintiffs, who, according to the custom

Digitized by Google

PRINCIPAL AND AGENT—*contd.*

were undoubtedly liable to the vendors. SAMEER MULL *v.* CHAGANLAL...**L. Rep. 6 I. A. 238 ; I. L. R. 5 Cal. 421, 1879.**

PRINCIPAL AND SURETY—*Clerk of the Small Cause Court—Bond for the Performance of Duties of Office—Liability of Surety—Act XI. of* 1865, § 51—*Small Cause Court Judge—Subordinate Judge.*] The defendant and one Church, then Clerk of the Small Cause Court at Allahabad, on the 20th of March 1871, entered into a bond to Mr Tyrrell, the then Judge of that Court, as well as to his successors in office, in a certain sum as security for the true and faithful performance by Church of his duties as Clerk of the said Court, and for his well and truly accounting for all moneys entrusted to his keeping as such Clerk of the Court. By a notification of the 6th of June 1866, the Government of the N.W. Provinces permanently invested the Judge of the Small Cause Court at Allahabad with the powers of a Principal Sudder Amin. Church was appointed Clerk of the Court in 1869 by the then Judge of the Court, who was then officiating as Judge of the Small Cause Court with the powers of a Principal Sudder Amin, or Subordinate Judge, under § 51 of Act XI. of 1865. It did not appear that Mr. Tyrrell had been invested with the powers of a Principal Sudder Amin, or Subordinate Judge, otherwise than under the above notification; but Mr. Rawlins, who was officiating as Judge of the Small Cause Court at the time of the misappropriations by Church, hereinafter mentioned, had been so invested by a special notification.

There had not been at any time any separate office or establishment for the purpose of cases tried by the Judge of the Small Cause Court as Subordinate Judge ; and Church from the time of his appointment until he absconded, performed the duties of Clerk of the Court in all cases, whether they were tried by the Judge in the Small Cause Court, or on the Subordinate Judge's side, and received the moneys paid or realized in respect of decrees passed on both sides of the Court. In a suit brought against the defendant upon his security bond to recover the amount therein mentioned in consequence of Church having misappropriated part of the proceeds of certain sales in execution of decrees passed by the Judge of the Small Cause Court, on the Subordinate Judge side of the Court :—

Held, 1st, that the Government by permanently investing the Judges of the Small Cause Court with the powers of a Principal Sudder Amin, by the notification of the 6th June 1866, had not exceeded its power, or contravened the law, though the occasional investiture of Small Cause Court Judges by name from time to time with the powers of a Principal Sudder Amin may have been the mode of procedure contemplated by the Legislature as the one likely to be ordinarily adopted ; and, therefore, that by that notification, the powers of a Principal Sudder Amin were legally conferred on Mr. Tyrrell, who was officiating as Small Cause Court Judge at the date of the execution of the bond. *Mussamat Bijee Koer* v. *Rai Damodar Dass* (H. C. Rep. N. W. P. 1873, p. 55,) dissented from.

2nd.—The grant of the powers of a Principal Sudder Amin, or Subordinate Judge, to the Judge of the Small Cause Court did not constitute him a Subordinate Judge, or create a Court distinct from that of the Small Cause Court. The Judge of the Small Cause Court when exercising the powers of a Subordinate Judge was still Judge of the Small Cause Court ; decrees passed by him in the exercise of those powers were decrees of the Small Cause Court ; moneys paid into Court under those decrees were paid into the Small Cause Court ; and, under § 45 of Act XI. of 1865, it was the duty of the Clerk of the Court to take charge and keep an account of them ; and the defendant, therefore, as Church's security, was liable for the misappropriation of those moneys by Church.

3rd.—Even if Mr. Tyrrell had not been, at the date of the bond, invested with the powers of a Subordinate Judge, Church, as Clerk of the Court, would nevertheless have been bound to receive, take charge, and keep accounts of moneys paid or realized under decrees of any of his successors in office invested with such powers, and the defendant, as Church's surety, would have been liable for his misappropriation of any of those moneys. CROSTHWAITE *v.* HAMILTON. *Turner*, C.J. (Offg.), *Pearson* and *Oldfield*, JJ... .....**I. L. Rep. 1 All. 87, 1875.**

2. —— *Giving Time—Interest paid in Advance—Discharge of Surety.*] As a general rule, the acceptance of interest in advance by the creditor operates as a giving of time to the principal debtor, and consequently as a discharge to the surety, unless the latter knows of, and consents to, the advance interest being taken. The question whether an advance of interest operates as a giving of time to the principal

Digitized by Google

PRINCIPAL AND SURETY—*contd.*

debtor is a mixed question of law and fact. PROTAB CHUNDER DASS *v.* GOUR CHUNDER ROY. *Garth*, C.J., and *McDonnell*, J...**I. L. Rep. 4 Cal. 132; 2 Cal. Rep. 455, 1878.**

3. —— *Execution against Surety—Interest—Giving Time.*] *R.* sued *M.*, *B.*, *C.*, and *P.*, for money due for goods supplied. Separate *solehnamahs* were filed by each of the four defendants, in which they admitted the debt, and each undertook to pay one-fourth thereof, with interest, by instalments, and each further agreed that if the other three should make default and the amount due by them should not be realized by the sale of their property, then he should be liable to make good the deficiency. A decree was passed by the Court in accordance with the terms of the *Solehnamah*. *C.* and *P.* each paid up their fourth-shares, but *M.* and *B.* having failed to pay, *R.* applied for execution against *C.* and *P.* in respect of the liability of *M.* and *B.*:—*Held*, that in the absence of proof that the whole property of *B.* had been exhausted, *R.*'s application could not be allowed.

Where a decree for payment of a certain sum with interest was passed against certain defendants as principal debtors, and against other defendants as sureties, and it appeared that the decree-holder had allowed time to the principal debtors for the purpose of increasing the amount of interest :—

Held, that the decree-holder was not entitled to interest after the time when he might and ought to have put up the property of the principal debtor for sale, when possibly it might have realized the whole of the debt then due. RAMANUND KOONDOO *v.* CHOWDHRY SOONDER NARAIN SARUNGY...**I. L. Rep. 4 Cal. 331, 1878, P. C.**

4. —— *Accommodation Acceptor—Discharge of Surety—Equitable Mortgage—Trust Deed for Benefit of Creditors—Eventual Remedy of Surety—Contract Act IX. of* 1872, §§ 132, 134, 135, 139—*Evidence Act I. of* 1872, § 92.] In 1872 and 1873, *N. P.* drew certain bills of exchange on the defendant, which were accepted by the defendant for the accommodation of *N. P.*, and endorsed by *N. P.* to the plaintiffs. In May 1876 *N. P.*, by letter addressed and sent to the defendant, agreed to execute a mortgage to the defendant, of certain property consisting of a share in a Privy Council decree, by way of collateral security and in order to keep the defendant safe, and for the payment of the amount of the said bills ; and in the mean time to hold the said share at the disposal of the defendant, his successors and assigns.

PRINCIPAL AND SURETY—*contd.*

In June 1876, *N. P.* became unable to meet his liabilities, and the plaintiffs called on the defendant to pay the amount due on the bills. In August 1876, and before the defendant had paid any of the bills, *N. P.* executed a deed of trust and assignment in favour of the Official Trustee, by which he purported to assign all his property, including his estate and interest in the Privy Council decree, to the Official Trustee on trust to realize the same, and divide the proceeds equally among all the creditors of *N. P.* The deed contained no composition with, or release by, the creditors, nor any covenant on their part not to sue. The plaintiffs executed this deed after it had been executed by some of the other creditors. In a suit by the plaintiff against the defendant as acceptor of the bills :—

Held, that § 132 of the Contract Act IX. of 1872 was not applicable. The liability which is undertaken by the acceptor and drawer of a bill is in no sense a joint liability. Though each contracts to pay the same sum of money, yet they contract severally, in different ways and subject to different conditions, and it is not because the law of India allows several persons who have undertaken different liabilities to be joined as defendants in the same suit that they are to be considered as having undertaken a joint liability.

The defendant, therefore, was not prohibited by the provisions of § 132 of the Contract Act, or of § 92 of the Evidence Act I. of 1872, from pleading that he was an accommodation acceptor only.

But that the letter of May 1876 constituted a good equitable mortgage, and such a substantial consideration for what were originally the defendant's accommodation acceptances, as to prevent his being thereafter in the position of a mere surety, or entitled as against the plaintiffs, who had advanced their money in good faith on the security of the bills, to the equitable rights of a surety.

But even assuming that the defendant was a mere surety, the execution of the trust deed by the plaintiffs did not amount to a giving of time, or a composition or a covenant not to sue within the meaning of § 135 of the Contract Act IX. of 1872 ; and, though the execution of the trust deed by the plaintiffs would, according to the English law, have discharged the defendant as surety, as

Digitized by Google

PRINCIPAL AND SURETY—*contd.*

being an act inconsistent with the rights of the surety, yet, under § 139 of the Contract Act IX. of 1872, before the act of a creditor can operate as a discharge of a surety, it is necessary to look further and see whether the eventual remedy of the surety against the principal is impaired; and that, under the circumstances of this case, the defendant's eventual remedies against *N. P.* and his property, so far from being impaired by the execution of the trust deed by the plaintiffs, were materially improved thereby; and, therefore, even assuming the defendant to have been in the position of a surety, the execution of the trust deed did operate to discharge him. POGOSE *v.* THE BANK OF BENGAL. *Garth*, C.J., and *Mitter*, J.....**I. L. Rep 3 Cal. 174, 1877.**

"PRIOR TO DECREE"—Suit referred to Commissioner to take Accounts.

See **Civil Procedure Code, Act X. of 1877, § 3.**

RUSTOMJI *v.* KESSOWJI...**I. L. Rep. 3 Bom. 161.**

PRIOR MORTGAGEE—Nature of Security of.

See **Mortgage. 1.**

SHRINGAPURE *v.* PETHE...**I. L. Rep. 2 Bom. 662.**

PRIORITY.

See **Constructive Fraud. 1.**

SALAMAT ALI *v.* BUDH SINGH... **I. L. Rep. 1 All. 303.**

—— Between Attaching Creditors.

See **Execution of Decree. 7.**

NARANDAS *v.* BAI MANCHHA.. **I. L. Rep. 3 Bom. 217.**

See **Limitation. 54.**

RAM KISHAN *v.* BHAWANI DAS...**I. L. Rep. 1 All. 333.**

See **Registration. 20.**

AHMED BUKSH *v.* GOBINDI ..**I. L. Rep. 2 All. 216.**

See **Sale in Execution of Decree. 14.**

MANIK SINGH *v.* PARAS RAM...**I. L. Rep. 1 All. 727.**

—— Between Mortgagee in Possession under Registered Mortgage (without Notice of Prior Unregistered Mortgage) and under Purchase at Court Sale in Execution of Money Decree obtained by Prior Mortgagee, and such Prior Mortgagee.

PRIORITY—*contd.*

See **Mortgage. 5.**

TUKARAM *v.* RAMCHANDRA...**I. L. Rep. 1 Bom. 143.**

—— Between Mortgagee being also Purchaser at Sale in Execution of Decree on his Mortgage, and Subsequent Mortgagee under Registered Mortgage also being Purchaser under similar Decree.

See **Mortgage. 25.**

VENKATANARASAMMAH *v.* RAMIAH. **I. L. Rep. 2 Mad. 108.**

—— Between Purchaser at Sale in Execution of Decree on Mortgage, and Purchaser from Prior Grantee from Mortgagor.

See **Mortgage. 6.**

MUTHORA NATH *v.* CHUNDERMONEY...**I. L. Rep. 4 Cal. 817.**

—— Of Registered Mortgage over Subsequent Registered Sale with Possession.

See **Registration. 3.**

See **Mortgage. 3.**

SHRINGAPURE *v.* PETHE.....**I. L. Rep. 2 Bom. 662.**

—— Between Registered and Unregistered Deeds of which Registration Unnecessary.

See **Registration. 20.**

AHMAD BUKSH *v.* GOBINDI...**I. L. Rep. 2 All. 216.**

—— Between Registered Deed of which Registration Compulsory, and Unregistered Deed of which Registration Optional under Act VIII. of 1871.

See **Registration. 25. 26. 30.**

BHOLA NATH *v.* BALDEO ..**I. L. Rep. 2 All. 198.**

OOGHRA SING *v.* ABLAKHI KOOER. **I. L. Rep. 4. Cal. 536.**

GANGA RAM *v.* BANSI...**I. L. Rep. 2 All. 431.**

—— Between Registered Deed under Act XX. of 1866 and Deed which might have been, but was not Registered under Act XIX. of 1843.

See **Registration. 32.**

KHANDU *v.* TARACHAND ..**I. L. Rep. 1 Bom. 574.**

Digitized by Google

PRISONS ACT XXVI. OF 1870—§§ 3, 45, 54—*Entering a* Havalat *with Intent to convey Food to a Prisoner.*] The accused came to a *havalat* where a prisoner under trial was confined, and asked the head constable on guard to be allowed to give food to the prisoner, and was refused. Shortly after this, the accused was found on the top of the *havalat* wall, where there was a platform for the police sentry, with the food which he attempted to give to the prisoner, and was arrested, and subsequently charged with, and convicted of, house-trespass, under § 448 of the Penal Code, by the Magistrate. On appeal the Session Judge reversed the conviction and sentence, and the accused was then, on the same facts, subsequently tried on a charge preferred under § 45 of the Prisons Act XXVI. of 1870, and convicted and sentenced; but on appeal the Session Judge again reversed the conviction, on the ground that he had been previously tried for the same offence, and therefore that the subsequent conviction and sentence must be quashed, under § 460 of the Criminal Procedure Code:—

Held by *Stuart*, C.J., that the former trial and acquittal of the accused was no bar to the second trial. By the second paragraph of § 460 of the Criminal Procedure Code, it is provided that a person convicted or acquitted of any offence may afterwards be tried for any other offence for which a separate charge might have been made against him on the former trial. Under § 454 of that Code, which provides that "if in one set of facts, so connected together as to form the same transaction, more offences than one are committed by the same person, he may be charged with, and tried for, every such offence at the same time;" § 460, however, providing that this may be done "afterwards." The Session Judge's objection, therefore, of *res judicata* or *autrefois acquit*, failed, and the second prosecution and all that followed on it were perfectly valid.

But *held* on the merits, that the conviction must be set aside.

His Lordship was "rather of opinion that a *havalat* was not a prison within the meaning of § 3 of Act XXVI. of 1870," but assuming that it was, then the introduction of food into the *huvalat* in the way alleged in this case was not an offence against the prison regulations, unless it was shown to be against some prohibitory law or regulation. But there was nothing of that character either in Act XXVI. of 1870, or in the rules for the management of prisoners adopted

PRISONS ACT XXVI. OF 1870—*contd.*

under the Act. According to the principles upon which statute laws are usually interpreted, the word "article" in § 45, Cl. 3, of Act XXVI. of 1870, would mean something of the same kind with a letter, such as other documents, or a newspaper, book, or other matter brought to the accused in a printed or written form, and not food; and the prison regulations merely prescribed the diet that was to be given to different classes of prisoners, without any other meaning in a penal sense, and there was nowhere in any of them any rule or order against such a contribution to a prisoner's food as had been attempted in the present case. The accused, therefore, was not guilty of an offence under § 45 of Act XXVI. of 1870, nor was he guilty of criminal trespass, nor of house trespass under the Penal Code, the *intent* to commit an *offence* being essential in both cases.

By *Spankie*, J.—That the accused was guilty on the facts found, of criminal trespass, and also of an offence under § 45 of Act XXVI. of 1870. A *havalat* is, under the rules issued by the Local Government under § 54 of that Act, a fifth class gaol, within the meaning of prison as defined by § 3.

By *Oldfield*, J.—That the word prison in § 3 of Act XXVI. of 1870 includes a *havalat* in which prisoners under trial are confined.

But that the regulations for the management and discipline of prisoners, issued under the authority of Act XXVI. of 1870, merely deal with the articles of food which such prisoners are to receive from the prison authorities; and contain no prohibition against their receiving any other supplies of food, and therefore that the conviction under § 45 of that Act could not be maintained, nor, consequently, could there be a conviction of house trespass or criminal trespass. EMPRESS *v.* LALAI.....**I. L. Rep. 2. All. 301, 1879.**

PRIVATE ALIENATION OF LAND AFTER ATTACHMENT — Attachment not properly notified.

See **Civil Procedure Code, Act VIII. of 1859, § 240. 1.**

NUR AHMAD *v.* ALTAF ALI.....**I. L. Rep. 2 All. 58.**

PRIVATE OCCUPATION ROAD—Presumption as to Title to Soil of.

See **Title to Soil of Road.**

SHAM CHURN *v.* TARINEY CHURN. **I. L. Rep. 1 Cal. 422, 428.**

Digitized by Google

PRIVATE PROSECUTOR—Right of—to apply for Revision in case of Acquittal.

See **Criminal Procedure Code, Act X. of 1872, § 297. 1. 3. 9.**

HARDEO ..**I. L. Rep. 1 All. 139.**

AUROKIAM...**I. L. Rep, 2 Mad. 38.**

NARAIN DAS.....**I. L. Rep. 1 All. 610.**

SUKHO *v.* DURGA PRASAD.....**I. L. Rep. 2 All. 448.**

PRIVILEGE—Qualified.

See **Libel. 2.**

HINDE *v.* BAUDRY...**I. L. Rep. 2 Mad. 13.**

PRIVILEGE FROM ARREST—*Arrest in Execution of Decree of Calcutta Court of Small Causes—Writ of* Habeas Corpus—*Power of High Court on Return to, to inquire into Validity of Commitment by Small Cause Court—Affidavits—Practice—Terms imposed on Petitioner.*] The Small Cause Court at Calcutta is not independent of the jurisdiction of the High Court, nor is it a Court of co-ordinate jurisdiction with the High Court, but is an inferior Court and subordinate to the control of the High Court, which has power to examine into and determine on the validity of orders of the Small Cause Court, which are brought before it regularly for that purpose.

Therefore, where on a prisoner being brought before the High Court on a writ of *habeas corpus ad subjiciendum*, the return of the jailor stated that the prisoner was detained under a warrant of arrest issued in execution of a decree of the Small Cause Court :—

Held, that the return was not conclusive; that it was not only justifiable, but absolutely, necessary, in a case of this kind, that the Court should look at affidavits to ascertain all the necessary facts not disclosed by the commitment itself, and that the petitioner was therefore entitled to show by affidavits that he was privileged from arrest at the time that he was arrested; and it appearing from the affidavits filed by the petitioner, that on the day of his arrest he was attending the Small Cause Court for the purpose of defending a suit set down for hearing on that day before the Third Judge, as the agent of his father, and also under a *subpœna* issued and directed to him at the instance of his father; that on his arrival in the Third Judge's Court he found that the Judge was trying the undefended cases, and he

PRIVILEGE FROM ARREST—*contd.*

therefore went downstairs to call his pleader, but not finding him, returned and waited in the Third Judge's Court till 3 p.m., when he discovered that the suit had already been decided *ex parte*; whereupon, after considering shortly what to do, but before the return of the Third Judge from tiffin, he left the Court and immediately came downstairs, and was arrested as soon as he left the main gate of the Small Cause Court premises, and as he was going towards his house:—*Held*, that under the circumstances the prisoner was privileged from arrest, and that even supposing the prisoner to have stayed longer in Court, after he learnt that the case was over, than was absolutely necessary, that fact alone did not deprive him of his privilege.

Held also, that it was incumbent on the applicant in such cases to come at once to the Court without delay; and the prisoner having been arrested two months before the application to the High Court, that Court would not have interfered on *habeas corpus*, but that the prisoner's affidavit sufficiently accounted for the delay, and showed that the interval had been consumed by fruitless applications to the Small Cause Court for release.

But the privilege set up by the prisoner being for the benefit of the public, and not for his own personal advantage, the Court required him before his discharge to give an undertaking not to bring an action for damages for illegal arrest, or false imprisonment, against the Judges of the Small Cause Court, the bailiff, the jailor, or the judgment creditor. *In the matter of* OMRITOLALL DEY. *Phear*, J...**I. L. Rep. 1 Cal. 78, 1875.**

S. C. under **Small Cause Court, Presidency Town. 5.**

PRIVILEGED COMMUNICATIONS.

See **Inspection. 2.**

WALLACE & Co. *v.* JEFFERSON...**I. L. Rep. 2 Bom. 453.**

—— Libel—Qualified Privilege.

See **Libel. 1. 2.**

SHEPHERD *v.* TRUSTEES OF PORT OF BOMBAY.....**I. L. Rep. 1 Bom. 132, 477.**

HINDE *v.* BAUDRY...**I. L. Rep. 2 Mad. 13.**

—— *Letter "without prejudice."*] "It was a very improper thing for the defendant's attor-

Digitized by Google

PRIVILEGED COMMUNICATIONS—*contd.*

ney to use a letter in evidence which was written 'without prejudice,' and obviously in the course of negotiation between the attorneys on both sides for an amicable adjustment of the plaintiff's claim.

"Communications such as these are clearly inadmissible in evidence. They are excluded on grounds of public policy and convenience; and the rule of law which excludes them is binding on arbitrators, as upon Courts of Justice, notwithstanding § 1 of the Evidence Act I. of 1872." *Per Garth*, C. J., in HOWARD *v.* WILSON.....**I. L. Rep. 4 Cal. 231, 236; 2 Cal. Rep. 488, 1878.**

S. C. under **Appeal—Civil. 35.**

2. —— *Evidence Act I. of* 1872, § 126 — *Professional Communications.*] Communications to be protected by § 126 of the Indian Evidence Act (I. of 1872) must be confidential or private. Where the defendants, at an interview at which the plaintiff was present, admitted their partnership to their attorney, who was then also acting as attorney for the plaintiff:—

Held, that the attorney was not precluded by § 126 of the Evidence Act (I. of 1872) from giving evidence of the admission to him: 1st, because the admission, having been made in the presence and hearing of the plaintiff, could not be regarded as private or confidential; 2ndly, because those communications were not made to the attorney exclusively in his character as attorney for the defendants, but were addressed to him quite as much as in his capacity as attorney for the plaintiff. MEMON HAJEE HAROON MAHOMED *v.* MOLVI ABDUL KARIM. *Westropp*, C.J., and *Sargent*, J....**I. L. Rep. 3 Bom. 91, 1878.**

PRIVITY OF ESTATE—Between Superior and Inferior Holders.

See **Kabulayatdar Khot.**

KRISHNAJI *v.* RAMCHANDRA...**I. L. Rep. 1 Bom. 70.**

PRIVY COUNCIL — Appeal from Order granting Appeal to.

See **Letters Patent (Calcutta), 1865, Cl. 15. 1.**

MOWLA BUKSH *v.* KISHEN PERTAB SAHI . **I. L. Rep. 1 Cal. 102.**

PRIVY COUNCIL—*contd.*

—— Appeal to—Admitted by Commissioner of Seetapore — Judicial Commissioner — "Court of Highest Jurisdiction in Province."

See **Appeal to the Privy Council. 2.**

THAKOOR HARDEO BUX *v.* THAKOOR JAWAHIR SINGH.....**L. Rep. 4 I. A. 178.**

—— Appeal to—Dismissal of—for Default in Deposit of Security.

See **Appeal to the Privy Council. 4.**

THAKOOR KAPILNATH SINGH *v.* THE GOVERNMENT.....**I. L. Rep. 1 Cal. 142.**

—— Appeal to—from Interlocutory Order.

See **Appeal to the Privy Council. 3. 5.**

PALAH DHARI RAI *v.* RADHA PARSAD SINGH...**I.L. Rep. 2 All. 65.**

TETLEY *v.* JAI SHANKAR.....**I. L. Rep. 1 All. 726.**

—— Appeal to—from Order of Remand.

See **Appeal to the Privy Council. 5.**

TETLEY *v.* JAI SHANKAR.....**I. L. Rep. 1 All. 726.**

—— Appeal to—Substantial Question of Law.

See **Act VI. of 1874, § 5. 1.**

FEDA HOSSEIN.....**I. L. Rep. 1 Cal. 431.**

—— Appeal to—Substantial Question of Law arising on the Evidence.

See **Act VI. of 1874, § 5. 2.**

MORAN *v.* MITTU BIBEE...**I. L. Rep. 2 Cal. 238.**

—— Appealable Value—Valuation for purposes of Stamp Law.

See **Appeal to the Privy Council. 1.**

BABOO LEKHRAJ ROY *v.* KANHYA SINGH...**L. Rep. 1 I. A. 317.**

—— Appeal to—Rehearing of.

See **Practice—Privy Council. 4.**

MAHARAJAH PERTAB NARIAN SINGH *v.* SUBHAO KOER...**I.L. Rep. 4 Cal. 184; L. Rep. 5 I. A. 171.**

Digitized by Google

PRIVY COUNCIL—*contd.*

—— Concurrent Findings on Facts—Practice.

See **Practice—Privy Council. 1. 2.**

MANOO LALL *v.* LALL CHOONEE LALL...**L. Rep. 1 I. A. 144.**

PAULIEM *v.* PAULIEM...**L. Rep. 4 I. A. 109; I. L. Rep. 1 Mad. 252.**

—— Leave to Appeal to—Granted *ultra Vires*—Practice.

See **Practice—Civil. 1.**

GAJADHUR *v.* WIDOWS OF EMAM ALI...**L. Rep. 2 I. A. 205.**

—— Limitation for Petition for Leave to Appeal to—Exclusion of Time necessary to obtain Copy of Judgment.

See **Limitation. 90.**

JAWAHIR LAL *v.* NARAIN DASS .. **I. L. Rep. 1 All. 644.**

—— Practice—Leave to Appeal granted *ultra Vires.*

See **Practice—Civil. 1.**

—— Practice — Petition heard *ex parte* — Rehearing.

See **Practice—Privy Council. 4.**

MAHARAJA PERTAB N. SINGH *v.* MAHARAJAH SUBHAO KOER... **L. Rep. 5 I. A. 171.**

—— Practice—Question Referred to Full Bench answered not in Form of Decree or Interlocutory Order—Respondent's Right to object without Cross-Appeal.

See **Practice—Privy Council. 3.**

PHOOLBAS KOOER *v.* LALA JOGESHUR...**L. Rep. 3 I. A. 7; I. L. Rep. 1 Cal. 226.**

—— Special Leave to Appeal — Obtained on other Grounds—Objection to Decree appealed against as Declaratory, precluded.

See **Practice—Privy Council. 9.**

SHEO SINGH RAI *v.* MUSST. DAKHO...**L. Rep. 5 I. A. 87; I. L. Rep. 1 All. 688.**

—— Special Leave to Appeal—Material Misstatements in Petition for.

See **Bengal Act VIII. of 1869, § 8, Cl. 2.**

RAM SABUK BOSE *v.* MONMOHINEE DOSSEE.....**L. Rep. 2 I. A. 71.**

PRIVY COUNCIL—*contd.*

—— Special Leave to Appeal—*nunc pro tunc.*

See **Practice—Civil. 1.**

GAJADHUR *v.* WIDOWS OF EMAM ALI...**L. Rep. 2 I. A. 502.**

—— Special Leave to Appeal — Re-opening Whole Case on Application at Hearing.

See **Practice—Privy Council. 7.**

THAKUR DARRIAO SINGH *v.* THAKUR DAVI SINGH...**L. Rep. 1 I. A. 1.**

—— Special Leave to Appeal—Review of Refusal to Register.

See **Practice—Privy Council. 8.**

MEER REEASAT HOSSEIN *v.* HADJI ABDOOLLAH...**L. Rep. 1 I. A. 72.**

—— Special Leave to Appeal—Valuation of Consolidated Suits.

See **Practice—Privy Council. 6.**

KRISTO SAHA *v.* HURMONEE ...**L. Rep. 1 I. A. 84.**

PROBATE—Amendment of.

See **Probate. 4.**

—— Attestation of Will—Signature Necessary—Mark Insufficient.

See **Indian Succession Act X. of 1865, § 50, Cl. 3.**

FERNANDEZ *v.* ALVES ... **I. L. Rep. 3 Bom. 382.**

—— Creditors of Alleged Heir, Right of, to oppose.

See **Probate. 6.**

—— Document Referring to Will—Memoranda in Testator's Handwriting.

See **Probate. 5.**

—— Executor, Title of.

See **Probate. 2.**

—— Granted subsequent to Decree—Creditor's Suit against Executor to satisfy Decree out of Property of Deceased.

See **Person taking Possession of Estate of a Deceased Hindu.**

PROSUNNO CHUNDER *v.* KRISTO CHYTUNNO.....**I. L. Rep. 4 Cal. 342.**

Digitized by Google

PROBATE—*contd.*

—— Renunciation of—Proof of Execution of Will in Court.

See **Hindu Law—Will. 3.**

SURBO MUNGOLA *v.* MOHENDRO NATH.....**I. L. Rep. 4 Cal. 508.**

—— Revocation of.

See **Probate. 3.**

—— of Will of Hindu Widow.

See **Probate. 1.**

1. —— *Application for—Rights of Executors—Devisees and Legatees—Hindu Widow.*] Upon an application for probate of a will, as long as it is made *bonâ fide*, it is not the province of the Court to go into questions of title with reference to the property of which the will purports to dispose.

Since the passing of the Succession Act (X. of 1865) no executor can make title to any property of the testator, nor sue for or claim any such property, nor collect or pay debts, or otherwise intermeddle with the affairs of the testator, without obtaining probate of the will.

Nor can persons who may be interested under the will make any title, or attempt to enforce their right, unless probate has first been granted; and, on the other hand, the grant of probate to the executor does not confer on him any title to property which the testator had no power to dispose of.

Held, therefore, that probate should be granted of the will of a Hindu widow, though she may have affected to dispose of property in which she had not more than a widow's estate. BEHARY LALL SANDYALL *v.* JUGGO MOHUN. *Garth*, C.J., and *McDonnell*, J.....**I. L. Rep. 4 Cal. 1; 2 Cal. Rep. 422, 1878.**

2. —— *Act XIII. of 1875—Rule 4 of Rules of High Court of 22nd June 1875.*] Act XIII. of 1875 does not empower the High Court to grant probate limited to property in any province or presidency, in cases where an unlimited grant had been made extending only to property in another province or presidency before the passing of the Act.

Per Macpherson, J.—Rule 4 of the Rules of 22nd June 1875 (15 Beng. L. Rep., High Court Rules, p. 10) as to grants of probate, only applies to grants of the class mentioned in Rule 1, *i.e.*, only to cases in which the application for probate is made after the 1st April 1875, and not to cases in which the application was made before that date. *In the Goods of* SHAMACHURN MULLICK. *Garth*, C.J., and *Macpherson*, J.....**I. L. Rep. 1 Cal. 52, 1875.**

3. —— *Proceedings for impeaching Probate—Act X. of 1865, §§ 188-242.*] The grant of probate is the decree of a Court which no other Court can set aside except for fraud or want of jurisdiction.

It is conclusive as to the genuineness of the will, which cannot be thereafter questioned in a civil suit in which the will is relied upon. When granted, the probate operates upon the whole estate, and establishes the will from the death of the testator, and renders valid all intermediate acts of the executor as such.

The proper course, if it is suggested that the probate has been wrongly granted, is to apply to the District Judge to revoke the probate, which can be revoked on any of the grounds mentioned in § 234 of Act X. of 1865. The Judge, on such application being made, should direct notice to be given to the executor, and all persons interested under the will, or claiming to have any interest in the estate of the deceased. The executor will be the plaintiff in the regular suit which the Judge will then have to try (§ 261). Where there has been already full inquiry as to the genuineness of the will, the Judge would have a right to take the previous grant of probate as *primâ facie* evidence of the will, and so shift the onus on to the objector. But if there has been no previous contention, and the will has only been proved summarily and *ex parte*, the Judge ought, in ordinary cases, to have the will regularly proved afresh. When the applicant for probate is about to prove a will in common form, and a *caveat* is put in, unless the parties desire to proceed at once to trial, a postponement should be granted, so that there may be a formal trial of the matter on all the evidence that either side can adduce.

Semble—A person interested by assignment in the estate of a deceased, where a will has been set up and proved, at variance with his interests, may apply to revoke the probate. *Baijnath Shahai* v. *Desputty Singh* (I. L. Rep. 2 Cal. 208, S. C. 25 W. Rep. 489) distinguished. KOMOLLOCHUN DUTT *v.* NILRUTTUN MUNDLE. *Markby* and *Prinsep*, JJ.....**I. L. Rep. 4 Cal. 360; 4 Cal. Rep. 175, 1878.**

Digitized by Google

PROBATE—*contd.*

4. —— *Will—Amendment of Probate—Act X. of* 1865, § 232.] The testator's will, as originally drawn up, contained a bequest to George Barney White, the testator intending to bequeath to George Barney Ward. Before the will was executed the mistake was observed, and the word "White" was struck through with a pen, and the word "Ward" written above, and the alteration was initialled by the attesting witnesses, but not by the testator. The probate of the will contained the word "White" only. On a motion of the affidavit of one of the attesting witnesses verifying the above facts, the probate was amended by inserting the word "Ward" instead of "White." *In the Goods of* WHITE. *Pontifex*, J.....**I. L. Rep. 4 Cal. 582, 1878.**

5. —— *Will — Memoranda in Testator's Handwriting—Domiciled Scotchman—Document referring to Will.*] After letters of administration with the will annexed had been granted, the administrator found a book containing memoranda, in the testator's handwriting, made after the date of the will, and directing certain dispositions of his property. One entry referred directly to the will. The testator was a domiciled Scotchman.

Held—on a petition by the administrator that it might be decided whether the entries were good and valid testamentary documents, and if so, that they might be admitted to probate—that the memoranda were not testamentary documents, and probate of them was therefore refused. *In the Goods of* SIR J. WEMYSS. *Pontifex*, J.....**I. L. Rep. 4 Cal. 721, 1879.**

6. —— *Application for Probate — Creditors of Alleged Heir, Right of, to oppose—Act X. of* 1865, § 250.] *A.*, a Hindu testator, died, leaving *B.*, alleged to be his adoptive son, and *C.*, who would be his heir in default of adoption. On application made by *B.* for probate of *A.*'s will after the usual notices, the creditors of *C.* came in and opposed the grant:—

Held, that under the Succession Act X. of 1865 as made applicable to Hindus by Act XXI. of 1870, the creditors were not parties "having any interest in the estate of the deceased," within the meaning of § 250 of the former Act, and were not, therefore, entitled to oppose the grant of probate. *In the matter of the Petition of* DESPUTTY SINGH. *Kemp* and *Birch*, JJ...**I. L. Rep. 2 Cal. 208, 1876.**

PROBATE DUTY — Annuity charged on Testator's Estate.

See **Court Fees. 9.**

In the Goods of RUSHTON...**I. L. Rep. 3 Cal. 736.**

—— On Probate taken out after Court Fees Act came into Operation—Duty paid on previous Grant of Probate.

See **Court Fees. 8.**

In the Goods of GASPER...**I. L. Rep. 3 Cal. 733.**

1. —— *Will—Court Fees Act VII. of* 1870, *Sched. I., Cl.* 11—*Act XVIII. of* 1869, § 12—*Annuity—Value.*] For the purpose of ascertaining the probate duty payable in respect of an annuity, the word "value" in Cl. 11, Schedule I. of the Court Fees Act VII. of 1870 must be taken to be the market value, and not ten times the amount of the annual payment, by analogy to § 12 of Act XVIII. of 1869, as the provisions of that section are therein expressly stated to be for the purposes of that Act, and cannot be extended.

Where the property in respect of which probate duty is sought is mortgaged, the amount of the mortgage incumbrance must be deducted from the market value of the property, and the probate fee charged on the balance. *In the matter of the Will of* RAMGHANDRA LAKSHMANJI: VENAYAK RAMCHANDRA LAKSHMAN. *Westropp*, C. J., and *Sargent*, J. **I. L. Rep. 1 Bom. 118, 1876.**

2. —— *Court Fees Act VII. of* 1870, *Sched. I., Cl.* 11 *and* 12—*Exemption from Probate Duty—Duty paid in England—Interest in Partnership Property.*] The testator, a member of the firm of G., A., & Co., of Calcutta, and of O., G., & Co., of Liverpool, died in England, leaving a will, of which he appointed *G.* and *O.* his executors. As partner in the said firms, the testator was interested in an indigo concern in Tirhoot and certain immoveable property in Calcutta, which constituted part of the assets and capital of the said partnership firms. It had been the practice on the death or retirement of a partner, that his interest in such properties, and also in the other assets of the firms in India and elsewhere, should be ascertained by valuation, and the total amount of the share of such partner in the entire partnership assets paid to him or his legal personal representatives, and the adjustment or the account of such retiring or deceased

Digitized by Google

PROBATE DUTY—*contd.*

partner was always made at the head office of the firms at Liverpool, and payments in respect of such share were always made in England.

Soon after the testator's death, the entirety of the indigo concern was contracted to be sold, and the valuation of the testator's share was made in the usual way in Liverpool, and the amount of such share was paid to the estate in England. In obtaining probate of the testator's will in England, *G.*, one of the executors, paid probate duty in England in respect of the testator's share in the indigo concern and the immoveable property in Calcutta.

The testator's name appearing on the title deeds of the indigo concern and the immoveable property in Calcutta as one of the owners, *O.* applied for probate of the will, to enable him to join in the conveyance of the indigo concern, and in any future sale of the other immoveable property. An unlimited grant of probate was made to *O.*, who claimed exemption from probate duty in respect of the properties, on the ground that (1) duty had already been paid in England in respect of the testator's share therein, and (2) that there was no amount or value in respect of which probate was to be granted in India:—

Held, on a case referred by the Taxing Officer (under Act VII. of 1870, § 5,) that there was no reason why the testator's share in the said properties should be exempt from duty, and that *O.* was not entitled, in obtaining probate, to exemption from the probate duty payable under Act VII. of 1870, Sched. I., Cl. 12, in respect of the properties *In the Goods of* GLADSTONE. *Garth*, C.J., and *Pontifex*, J...**I. L. Rep. 1 Cal. 168, 1876.**

See In the Goods of MURCH.....**I. L. Rep. 4 Cal. 725.**

Under **Administration. 4.**

PROCEEDINGS TO ENFORCE OR KEEP IN FORCE A DECREE—Receipt of Instalments out of Court under Compromise is not.

See **Limitation. 5.**

STOWELL *v.* BILLINGS.....**I. L. Rep. 1 All. 350.**

—— Striking off Execution Case for Default of Prosecution is not.

See **Limitation. 23.**

RAG U RAM *v.* DANNU LAL...**I. L. Rep. 2 All. 285.**

PROCEEDINGS TO ENFORCE OR KEEP IN FORCE A DECREE—*ctd.*

—— Suit against Person intervening in Execution Proceedings.

See **Limitation. 74.**

PARAS RAM *v.* GARDNER.....**I. L. Rep. 1 All. 355.**

"PROCEDURE."

See **Appeal—Civil. 9.**

RUNJIT SINGH *v.* MEHERBAN KOER **I L. Rep. 3 Cal. 662.**

—— Alteration of—pending Suit.

See **Civil Procedure Code, Act X. of 1857, § 342.**

RATTANSI KALLIANJI ..**I. L. Rep. 2 Bom. 148.**

See **Construction of Statute. 5.**

SITARAM *v.* KHANDERAV.....**I. L. Rep. 1 Bom. 286.**

PROCEDURE—CIVIL—Dismissal of Suit.

See **Civil Procedure Code, Act VIII. of 1859, § 148.**

RYALL *v.* SHERMAN...**I. L. Rep. 1 Mad. 287.**

—— For impeaching Probate of a Will.

See **Probate 3.**

KOMOLLOCHUN *v.* NILRUTTON...**I. L. Rep. 4 Cal. 360.**

—— Issues not raising Points of Minority or Undue Influence.

See **Mahomedan Law—Gift. 2.**

AMEEROONISSA *v.* ABEDOONISSA. **L. Rep. 2 I. A. 87.**

—— In Suit on Behalf of Minor—Act X. of 1877, § 440—Certificate.

See **Bombay Minors' Act XX. of 1864, § 2.**

MURLIDHAR *v.* SUPDU.....**I. L. Rep. 3 Bom. 149.**

—— *Act XXIII. of* 1861, § 4—*Defendants not all residing within Jurisdiction—Drawer and Acceptor of* Hundi—*Bankruptcy of Acceptor—Joinder of Parties.*] The plaintiff, the payee of a *hundi* payable at Calcutta drawn by two of the defendants, who resided out of Calcutta, on the third defendant, who managed a branch of the firm at Calcutta, sued all three defendants, on the acceptor having become bankrupt before the *hundi* reached maturity, to recover the amount he had paid to the drawers. The suit was instituted in the Court within whose

Digitized by Google

PROCEDURE—CIVIL—*contd.*

jurisdiction the drawers resided, and the plaintiff obtained a decree in the Court of first instance, but the lower Appellate Court dismissed the suit, on the ground that the Court of first instance was incompetent to pass a decree against all the defendants, without obtaining the sanction of the District Court within the limits of whose jurisdiction the third defendant resided, according to the provisions of § 4, Act XXIII. of 1861:—

Held, that if it had been necessary to make the acceptor a defendant, the procedure should have been as provided by § 4 of Act XXIII. of 1861, and the sanction of the proper Court in Calcutta obtained, but it was not necessary to implead him at all, even if he had not declared his bankruptcy. The holder of a *hundi*, or of a bill or note, is not bound, in the event of its dishonour, to sue all the parties liable to him under it, but may, at his option, select his defendant or defendants, as he may judge best for recovery of the money. This is the law of England, where although the holder of a bill may have issued the writs, or a writ against all or any of his debtors, he is not bound to sign judgment against them all, but may select any one or more of them, and the law in India does not appear to be different. The suit was therefore remanded for trial on the merits. BASANT RAM *v.* KOLAHAL. *Stuart*, C.J., and *Oldfield*, J...**I. L. Rep. 1 All. 392, 1877.**

PROCEDURE — CRIMINAL — Mode in which a Magistrate should show Cause against a Rule.

See **Mode in which a Magistrate, &c.**

HURRO SOONDERY CHOWDERIN. **I. L. Rep. 4 Cal. 20.**

—— *Stamp Act XVIII. of* 1869, §§ 29, 43—*Magistrate authorised to prosecute.*] A Magistrate who has been authorized by the Collector of a district, under § 43 of Act XVIII. of 1869, to prosecute offenders against the stamp laws, is not competent also to try persons whom he prosecutes. The Collector should appoint some person other than a Magistrate to conduct the prosecution. EMPRESS *v.* GANGADHUR BHUNJO. *Markby* and *Prinsep*, JJ...**I. L. Rep. 3 Cal. 622, 1878.**

PROCLAMATION OF EXECUTION SALE — Insufficient Description in — of Place of Sale.

See **Sale in Execution of Decree. 8.**

SHOWERS *v.* SETH GOBIND DASS... **I. L. Rep. 1 All. 400.**

PROCLAMATION OF EXECUTION SALE—*contd.*

—— Material Error in—as to Amount of Government Revenue.

See **Sale in Execution of Decree. 18.**

GIRDHARI *v.* HURDEO NARAIN... **L. Rep. 3 I. A. 230.**

—— Not made on the spot.

See **Sale in Execution of Decree. 8.**

SHOWERS *v.* SETH GOBIND DASS. **I. L. Rep. 1 All. 400.**

—— Omission to issue Fresh—on Adjournment of Sale.

See **Sale in Execution of Decree. 6.**

GOPEE NATH *v.* ROY LUCHMIPUT. **I. L. Rep. 3 Cal. 542.**

—— Omission to issue Fresh—on Release from Attachment of Part of Property advertised for Sale.

See **Sale in Execution of Decree. 11.**

SHIB PROKASH SINGH *v.* SARDAR DAYAL SINGH...**I. L. Rep. 3 Cal. 544.**

PRODUCTION OF DOCUMENTS — In Possession of one Partner—Sole Defendant.

See **Inspection. 1.**

HAJI JAKARIA *v.* HAJI CASIM...**I. L. Rep. 1 Bom. 496.**

PROFITS, SUIT FOR—*Sir* Land not assessed—Suit by Purchaser of Share.

See **Suit for Profits.**

MUHAMMAD ALI *v.* KALIAN SINGH. **I. L. Rep. 1 All. 659.**

PROJECTING EAVES — Suit to Establish Right to cut.

See **Easement. 2.**

MOHANLAL *v.* AMRATLAL ... **I. L. Rep. 3 Bom. 174.**

PROMISSORY NOTE—Assignment of.

See **Assignment of Chose in Action.**

KANHAIYA LAL *v.* DOMINGO...**I. L. Rep. 1 All. 732.**

—— In Consideration of Time-barred Debt.

See **Limitation. 42.**

RAGOJI *v.* ABDUL ... **I. L. Rep. 1 Bom. 590.**

Digitized by Google

PROMISSORY NOTE—*contd.*

CHATUR *v.* TULSI...I. L. Rep. 2 Bom. 230.

—— Interest, Stipulation to pay High Rate of, on Default in Payment of.

See **Contract. 12.**

MACKINTOSH *v.* HUNT.....I. L. Rep. 2 Cal. 202.

—— Summary Suit on—Extending Time for Defendant to obtain Leave to appear and defend.

See **Civil Procedure Code, Act X. of 1877, § 532.**

GROOM *v.* WILSON...I. L. Rep. 3 Cal. 539.

—— Unstamped—Suit on—Evidence of Consideration.

See **Evidence. 4.**

GOLAB CHAND *v.* THAKURANI MOHOKOOM.....I. L. Rep. 3 Cal. 315.

PROMISSORY NOTE PAYABLE ON DEMAND—Limitation to Suit on.

See **Limitation. 1. 11. 15, 56.**

NOCOOR CHUNDER BOSE *v.* KALLY COOMAR GHOSE...I. L. Rep. 1 Cal. 328.

RAMCHANDRA *v.* SOMAR.....I. L. Rep. 1 Bom. 305, n

MADHAVAN *v.* ACHUNDA.....I. L. Rep. 1 Mad. 301.

NATHA *v.* JANARDHAN.....I. L. Rep. 1 Bom. 503.

See **Onus Probandi. 2.**

ABDUL KARIM *v.* MANJI HANSRAJ. I. L. Rep. 1 Bom. 295.

PROMISSORY NOTE PAYABLE BY INSTALMENTS—Suit on.

See **Act V. of 1866.**

REMFREY *v.* SHILLINGFORD...I. L. Rep. 1 Cal. 180.

See **Limitation. 30.**

GUMNA *v.* BHIKU...I. L. Rep. 1 Bom. 125.

PROOF—Of Breach of Covenant for Title.

See **Proof of Breach of Covenant for Title,** *infra.*

—— Burden of.

See **Onus Probandi.**

PROOF—*contd.*

—— Of Cession of Territory.

See **Cession of Territory. 2.**

DAMODHAR *v.* GANESH...10 Bom. H. C. Rep. 37; I. L. Rep. 1 Bom. 367; L. Rep. 3 I. A. 102; L. Rep. 1 App. Ca. 332.

—— Of Custom.

See the Cases collected under **Custom.**

See **Khojas.**

RAHIMATBAI *v.* HIRBAI.....I. L. Rep. 3 Bom. 34.

—— Of Determination of Tenancy, where Relation of Landlord and Tenant has once existed, Necessary—Mere Non-payment of Rent Insufficient.

See **Landlord and Tenant. 9.**

PREM SUKH DAS *v.* BHUPIA...I. L. Rep. 2 All. 517.

—— Of Mirasdar's Title.

See **Miras.**

BABAJI *v.* NARAIN...I. L. Rep. 3 Bom. 340.

—— Of Notice.

See **Onus Probandi. 1.**

LALLUBHAI *v.* AMRIT...I. L. Rep. 2 Bom. 299.

—— Of Ownership.

See **Onus Probandi. 6.**

RATAN KUAR *v.* JIWAN SINGH...I. L. Rep. 1 All. 194.

—— Of Payment—Parol Evidence of—contrary to Stipulation in Bond.

See **Bond to secure Balance of Account.**

NARRAYAN *v.* MOTILAL.....I. L. Rep. 1 Bom. 45.

—— Of Payment of *Hundi.*

See **Onus Probandi. 2.**

ABDUL KARIM *v.* MANJI .....I. L. Rep. 1 Bom. 295.

PROOF OF BREACH OF COVENANT FOR TITLE—In a suit for an alleged breach of a covenant for title, it is not enough to prove unsuccessful proceedings to recover possession from third parties, or even an eviction by third parties, in order to prove a breach of such covenant as against the covenantor and his representatives. Such proceedings are not neces-

Digitized by Google

PROOF OF BREACH OF COVENANT FOR TITLE—*contd.*

sarily, though they may happen to be, binding, and the plaintiff has in general to prove, as against the covenantor and his representatives, not only that the plaintiff's proceedings to recover possession had been unsuccessful, or that an eviction of the plaintiff had taken place, but that such proceedings were rightfully unsuccessful, or that such eviction was rightful. In other words he has to prove, as against the covenantor or his representatives, that the title was bad by reason of some act or fact covenanted against. Otherwise it would be very easy for any purchaser, who had repented of his bargain, to get up collusive proceedings, either as plaintiff or defendant, and then sue the covenantor to recover purchase-money and interest. *Per Green*, J., in RAJU BALU *v.* KRISHNARAV RAMCHANDRA. **I. L. Rep. 2 Bom. 273, 287.**

S. C. under **Registration. 28.**

PROOF OF EXECUTION OF WILL IN COURT.

See **Hindu Law—Will. 3.**

SURBO MUNGOLA *v.* MOHENDRO NATH...**I. L. Rep. 4 Cal. 508.**

PROOF IN INSOLVENCY—*Cestui-que-Trust* Creditor.

See **Insolvency. 7.**

VARDALA CHARRI ..**I. L. Rep. 2 Mad. 15.**

PROOF OF SERVICE OF NOTICE OF FORECLOSURE—Bengal Reg. XVII. of 1806—Finding of Zillah Judge in Foreclosure Proceedings—Purchasers of Equity of Redemption.

See **Mortgage. 13. 14.**

NORENDER *v.* DWARKA LAL.....**L. Rep. 5 I. A. 18.**

BANK OF HINDUSTAN *v.* SHOROSHIBALA...**I. L. Rep. 2 Cal. 311.**

PROPERTY ALLEGED TO BE STOLEN, ORDER FOR DISPOSITION OF.

See **Criminal Procedure Code, Act X. of 1872, §§ 415 to 419, 1. 2.**

In re ANPURNABAI...**I. L. Rep. 1 Bom. 630.**

EMPRESS *v.* NILAMBAR.....**I. L. Rep. 2 All. 276.**

PROPERTY NOT IN ESSE—Mortgage of—Stamp.

See **Mortgage. 22.**

MORAN *v.* MITTU BIBEE.....**I. L. Rep. 2 Cal. 58.**

PROPERTY IN THE HANDS OF THE RECEIVER OF THE HIGH COURT—Attachment of—Order on Receiver to sell.

See **Receiver, Property in the hands of.**

HEM CHUNDER *v.* PRANKRISTO .. **I. L. Rep 1 Cal. 403.**

PROPORTIONATE SHARE OF MORTGAGE DEBT.

See **Apportionment of Mortgage Debt.**

HIRDY NARRAIN *v.* SYED ALLOOLLA...**I. L. Rep. 4 Cal. 72.**

PROPRIETARY POSSESSION — Mad. Reg. XXV. of 1801.

See **Polliem. 1.**

THE COLLECTOR OF TRICHINOPOLY *v.* LEKKAMANI...**L. Rep. I. A. 282.**

PROPRIETARY RIGHT — Question of—Appeal to Judge.

See **Act XVIII. of 1873, § 93. 3.**

BISHESHAR SINGH. *v.* MUSAMAT SUGUNDHI...**I. L. Rep. 1 All. 366.**

—— Variation of Assessment does not Affect.

See **Bombay Act I. of 1865, § 35.**

COLLECTOR OF THANA *v.* DADABHAI...**I. L. Rep. 1 Bom. 353.**

PROPRIETARY RIGHT IN THE LAND.

See **Rights of Mirasdars.**

FAKIR MUHAMMAD *v.* TIRUMALA CHARIAR...**I. L. Rep. 1 Mad. 205.**

—— Evidence of.

See **Enhancement of Rent. 5.**

PARSOTAM *v.* KALYAN...**I. L. Rep. 3 Bom. 348.**

Digitized by Google

PROPRIETARY RIGHT OF HOLDERS OF LAND IN SALSETTE.

See **Bombay Act I. of 1865, § 35.**

COLLECTOR OF THANA *v.* DADABHAI...**I. L. Rep. 1 Bom. 352.**

PROPRIETARY RIGHTS IN A MAHAL—Mortgage of.

See **Act XVIII. of 1873, § 7. 2.**

BHAGWAN SINGH *v.* MURLI SINGH. **I. L. Rep. 1 All. 459.**

—— Mortgage of—followed by Sale—Rights of Mortgagor to hold *Sir* Lands.

See **Act XVIII. of 1873, § 7. 1.**

BAKHAT RAM *v.* WAZIR ALI...**I. L. Rep. 1 All. 448.**

PROPRIETARY RIGHT OF MIRASDAR.

See THE COLLECTOR OF THANA *v.* DADABHAI.....**I. L. Rep. 1 Bom. 352-361.**

PROPRIETARY RIGHT OF POLIGARS.

See **Polliem. 1.**

THE COLLECTOR OF TRICHINOPOLY *v.* LEKKAMANI ... **L. Rep. 1 I. A. 283.**

PROSECUTION—Commencement of.

See **Sanction to Prosecute. 4.**

IMPX. *v.* LAXSHMAN...**I. L. Rep. 2 Bom. 481.**

PROSECUTION OF JUDGE OR PUBLIC SERVANT—Sanction for.

See **Sanction to Prosecute. 4.**

IMPX. *v.* LAKSHMAN...**I. L. Rep. 2 Bom. 481.**

PROSTITUTION—Disposal of Minor Girl for purposes of.

See **Penal Code, § 372.**

REG. *v.* ARUNA CHELLAM.....**I. L. Rep. 1 Mad. 164.**

PROSTITUTION OF LEGAL GUARDIAN OF MINOR DISQUALIFIES FOR RIGHT OF CUSTODY OF MINOR.

See **Mahomedan Law—Guardian.**

ABASI *v.* DUNNE.....**I. L. Rep. 1 All. 598.**

PUBLIC DOCUMENT.

See **Jamabandi.**

TARU PATUR *v.* ABINASH CHUNDER DUTT...**I. L. Rep. 4 Cal. 79.**

PUBLIC FERRY—Plying Boats near a.

See **Criminal Trespass. 2.**

MUTHRA *v.* JAWAHIR...**I. L. Rep. 1 All. 527.**

PUBLIC HIGHWAYS—Power of Municipal Commissioner to close or divert.

See **Bengal Act III. of 1864.**

EMPRESS *v.* BROJONATH DEY... **I. L. Rep. 2 Cal. 425.**

PUBLIC NAVIGABLE RIVERS—Right of Private Fishery in.

See **Right of Fishery in Public Navigable River.**

PROSUNNO COOMAR SIRCAR *v.* RAM COOMAR PAROOEY.....**I. L. Rep. 4 Cal. 53.**

PUBLIC NUISANCE—Abatement of—Suit for.

See **Right to Sue. 1 to 5.**

KARIM BAKSH *v.* BUDHA.....**I. L. Rep. 1 All. 249.**

RAJ KOOMAR SINGH *v.* SAHEBZADA ROY...**I. L. Rep. 3 Cal. 20.**

SATHU KADIR SAUSARE *v.* IBRAHIM AGA.**I. L. Rep. 2 Bom. 457.**

GEHANJI KES PATIL *v.* GANPATI LAKSHMAN.....**I. L. Rep. 2 Bom. 467.**

PUBLIC POLICY—Agreement against.

See the Cases collected under **Champerty.**

—— Agreement against—Agreement by Pleader for Reward proportioned to Amount decreed.

See **Inam Chitti.**

RAMCHANDRA *v.* KALU.....**I. L. Rep. 2 Bom 362.**

—— Agreement against—Restraint of Trade.

See **Contract. 17. 17a.**

OAKES & Co. *v.* JACKSON...**I. L. Rep. 1 Mad. 134.**

VAITHELHINGA *v.* SAMINADA.....**I. L. Rep. 2 Mad. 44.**

Digitized by Google

PUBLIC RIVER—Infringement of Exclusive Right of Fishing in.

See **Criminal Trespass. 3.**

EMPRESS *v.* CHARU NAYIAH... **I. L. Rep. 2 Cal. 354.**

PUBLIC SERVANT—Acceptance of "*Dasturi*" by.

See **Penal Code, § 165.**

EMPRESS *v.* KAMPTA PRASAD...**I. L. Rep. 1 All. 530.**

—— Contempt of Lawful Authority of.

See **Criminal Procedure Code, Act X. of 1872, § 210.**

In re MUSE...**I. L. Rep. 2 Bom. 653.**

—— Disobedience of Order of.

See **Disobedience of Order of Public Servant.**

MUTHRA *v.* JAWAHIR...**I. L. Rep. 1 All. 527.**

—— Municipal Commissioners.

See **Jurisdiction. 18.**

GANGADHAR *v.* COLLECTOR OF AHMEDNAGAR ... **I. L. Rep. 1 Bom. 628.**

—— Penal Code, § 21—Act IV. of 1877, § 39.

See **Municipal Commissioners.**

EMPRESS *v.* MUNICIPAL CORPORATION OF CALCUTTA...**I. L. Rep. 3 Cal. 758.**

—— *Poddar* of Bank of Bengal.

See **Penal Code, § 21, Cl. 9.**

MODUN MOHUN.....**I. L. Rep. 4 Cal. 376.**

—— Sanction to Prosecute.

See **Sanction to Prosecute. 4.**

IMPX. *v.* LAKSHMAN ...**I. L. Rep. 2 Bom. 481.**

—— *Penal Code*, § 21.] A person appointed by the Government solicitor, with the approval of Government, and under an arrangement made by the Governor-General in Council, to act as prosecutor in the Calcutta Police Courts, is a public servant within the meaning of § 21 of the Penal Code. EMPRESS *v.* BUTTO KRISTO DOSS. *Jackson* and *Cunningham*, JJ...**I. L. Rep. 3 Cal. 497, 1878.**

PUBLIC SPRINGS.

See **Penal Code, § 277.**

EMPRESS *v.* HALADHUR PORAE... **I. L. Rep. 2 Cal. 383.**

PUBLIC THOROUGHFARE—Obstruction to—Suit to remove.

See **Right to Sue. 1 to 5.**

PUBLIC USE OF INVENTION.

See **Infringement of Patent.**

SHEEN *v.* JOHNSON...**I. L. Rep. 2 All. 368.**

PUBLICATION OF LIBEL.

See **Libel.**

SHEPHERD *v.* THE TRUSTEES OF THE PORT OF BOMBAY...**I. L. Rep. 1 Bom. 477.**

PUBLICATION OF NOTICE OF SALE FOR ARREARS OF RENT—Defective—"Sufficient Plea" to set aside Sale.

See **Beng. Reg. VIII. of 1819, § 8. 1.**

GOUREE LALL *v.* JOODHISTEER HAJRAH...**I. L. Rep. 1 Cal. 356.**

PUBLICATION OF NOTICE OF SALE OF PUTNI TENURE FOR ARREARS OF RENT.

See **Beng. Reg. VIII. of 1819, § 8, Cl. 2. 3.**

MATUNGEE CHURN *v.* MOORRARY MOHUN...**I. L. Rep. 1 Cal. 175.**

PUBLISHING BANNS OF MARRIAGE.

See **Attempt. 1.**

REG. *v.* PETERSON...**I. L. Rep. 1 All. 316.**

PURCHASE OF DECREE BY JOINT JUDGMENT DEBTOR.

See **Limitation. 51.**

ABUL MUNSOOR *v.* ABDOOL HAMID. **I. L. Rep. 2 Cal. 98.**

PURCHASE WITH JOINT FUNDS BY MEMBER OF UNDIVIDED FAMILY.

See **Hindu Law—Undivided Family. 10.**

BISSESSUR LALL SAHOO *v.* MAHARAJAH LUCHMESSUR SINGH. **L. Rep. 6 I. A. 233.**

Digitized by Google

PURCHASE IN HIS OWN NAME BY MANAGING MEMBER OF JOINT HINDU FAMILY AT REVENUE SALE.

See **Act I. of 1845, § 21.**

TOONDUN SINGH *v.* POKHNARAIN SINGH...L. Rep. 1 I. A. 342.

PURCHASE-MONEY—Right to Recover—on Setting Aside Revenue Sale, after Judgment-Debtor's Interest in Surplus Proceeds has been sold in Execution.

See **Sale in Execution of Decree. 17.**

RAM THUL SINGH *v.* BISESWAR LALL SAHOO...L. Rep. 2 I. A. 131.

—— Right of Purchaser at Execution Sale to recover—on Sale being set aside.

See **Sale in Execution of Decree. 13. 21.**

MAKUNDI LAL *v.* KAUNSILA...I. L. Rep. 1 All. 568.

BASAPPA *v.* DHUNDYA.....I. L. Rep. 2 Bom. 240.

See **Sheriff's Sale. 1. 2. 4.**

DORAB ALLY KHAN *v.* KHAJAH MOHEEOODEEN...I. L. Rep. 1 Cal. 55; L. Rep. 5 I. A. 116; I. L. Rep. 3 Cal. 806.

FRAMJI *v.* HORMASJI...I. L. Rep. 2 Bom. 258.

—— Right of Purchaser at Execution Sale under Act VIII. of 1859 to recover—on Eviction.

See **Civil Procedure Code, Act X. of 1877, § 315.**

MULO...I. L. Rep. 2 All. 299.

—— Right of Purchaser at Revenue Sale for Arrears of Rent to recover—on Sale being set aside.

See **Setting aside Sale of Superior Tenure, Effect of.**

SREENARAIN BAGCHEE *v.* SMITH. I. L. Rep. 4 Cal. 807.

See **Sale in Execution of Decree. 17.**

RAM THUL SINGH *v.* BISESWAR LALL SAHOO...L. Rep. 2 I. A. 131.

PURCHASE-MONEY—*contd.*

—— Right of Purchaser at Sale by Sheriff, under Writ of *Fieri Facias*, to recover on Eviction, on Sale being declared Void.

See **Sheriff's Sale. 1. 2. 4.**

DORAB ALLY KHAN *v.* KHAJAH MOHEEOODDEEN ...I. L. Rep. 1 Cal. 55; I. L. Rep. 3 Cal. 806; L. Rep. 5 I. A. 116.

FRAMJEE *v.* HORMASJEE...I. L. Rep. 2 Bom. 258.

—— Vendor's Lien for Unpaid.

See **Vendor and Purchaser. 1.**

TRIMULRAV *v.* MUNICIPAL COMMISSIONERS OF HUBLI...I. L. Rep. 3 Bom. 172.

PURCHASE BY MORTGAGEE OF BIRT TENURES WITHIN THE TALOOK—Right of Mortgagor of Talook to redeem.

See **Mortgage. 15.**

RAJAH KISHENDATT RAM *v.* RAJAH MUMTAZ ALI KHAN.....L. Rep. 6 I. A. 145.

PURCHASE BY MORTGAGEE OF MORTGAGED PROPERTY SUBSEQUENTLY SET ASIDE—Right of Purchaser at Execution Sale of Mortgagor's Interest to redeem.

See **Mortgage. 28.**

PHUL KUAR *v.* MURLI DHUR... I. L. Rep. 2 All. 527.

PURCHASE BY MORTGAGEE OF SHARE OF ONE OF SEVERAL JOINT MORTGAGORS—Effect of.

See **Mortgage. 29.**

KURAY MAL *v.* PURAN MAL...I. L. Rep. 2 All. 565.

PURCHASE BY A TRUSTEE—*Inadequacy of Consideration.*] *Y. C. M.*, as executor of his father, obtained a decree for Rs. 1,70,000, and held the same in trust as regards one-fifth thereof for the plaintiffs. Subsequently he took an assignment, for the joint benefit of himself and his brother *S.*, of the beneficial interest in the plaintiffs' share, for Rs, 5,000, from *M.*, one of the executors of the plaintiffs' father. The plaintiffs had derived title to their one-fifth share under the will of their father; and subsequently obtained a decree for the said Rs. 5,000 against

Digitized by Google

PURCHASE BY A TRUSTEE—*contd.*

M. in an administration suit. *J. C. M.* was co-executor with *M.* of the plaintiffs' father, though he was said to have renounced.

In a suit against *J. C. M.* to declare the said assignment invalid except as a security for the said sum of Rs. 5,000, and any other sums justly due (*M.* and *S.* being made party defendants) :—

Held, that the purchase, being for an inadequate consideration, was invalid, and that the share must be restored to the plaintiffs on the purchase-money being returned, inasmuch as *J. C. M.* holding the decree in a fiduciary position for the plaintiffs, could not purchase the same either for his own benefit, or that of himself and his brother jointly. Such a suit being against *J. C. M.* as a purchaser in his own right was not in the nature of a review of a decree against *M.*, who had been sued as executor of the plaintiffs' father. DHONENDER CHUNDER MOOKERJEE *v.* MUTTY LALL MOOKERJEE.....**L. Rep. 2 I. A. 18 ; 23 W. R. 6 ; 14 Beng. L. R. 276, 1874.**

PURCHASER FROM HEIR OR DEVISEES OF DECEASED HINDU — Liability of—for Debts of (Ancestor or) Testator.

See **Limitation. 38a.**

GREENDER CHUNDER GHOSE *v.* MACKINTOSH.....**1. L. Rep. 4 Cal. 897.**

PURCHASER FOR VALUE, BONA FIDE, WITHOUT NOTICE—Of Ancestral Property, in Execution of Decree against Father.

See **Hindu Law—Alienation of Ancestral Property. 3.**

GIRDHAREE LALL *v.* KANTOO LALL. **L. Rep. 1 I. A. 321.**

—— Sham Decree set up against.

See **Mortgage. 7.**

GOPI *v.* MARKANDE....**I. L. Rep. 3 Bom. 30.**

—— Of Trust Property.

See **Dewuttur. 2.**

KONWUR DOORGANATH ROY *v.* RAMCHUNDER SEN...**L. Rep. 4 I. A. 53 ; I. L. Rep. 2 Cal. 341.**

See **Limitation. 27.**

PIARY LAL *v.* SALIGA...**1. L. Rep. 2 All. 394.**

PURCHASER FOR VALUE, BONA FIDE, WITHOUT NOTICE—*contd.*

See **Hindu Law—Will. 10.**

MANIKLAL *v.* MANCHARSHA...**I. L. Rep. 1 Bom. 269.**

See **Trust. 1. 2.**

KAMAL SINGH *v.* BATUL FATIMA. **I. L. Rep. 2 All. 460.**

HARBHAJ *v.* GUMANI...**Ibid. 493.**

—— Of Widow's Claim for Maintenance.

See **Hindu Law—Maintenance of Widow. 1. 13.**

ADHIRANEE *v.* SHONA MALEE...**I. L. Rep. 1 Cal. 365.**

LAKSHMAN *v.* SATYABHAMABAI...**I. L. Rep. 2 Bom. 494.**

PURCHASER OF DECREE—Application by, for Execution—Appeal.

See **Appeal—Civil. 9.**

RUNJIT SINGH *v.* MEHERBAN KOER...**I. L. Rep. 3 Cal. 662.**

—— Money decree obtained on Mortgage Bond acquires no Lien on Property.

See **Mortgage. 40.**

GANPAT RAI *v.* SARUPI...**I. L. Rep. 1 All. 446.**

—— Right of—to Appeal against Refusal to place him on the Record and Execute Decree.

See **Act XXIII. of 1861, § 11. 1.**

SOBHA BIBEE *v.* MIRZA SAKHAMUT ALI...**I. L. Rep. 3 Cal. 371.**

PURCHASER FROM DEFENDANT AFTER DECREE AGAINST THE LATTER — Right of — to carry on Special Appeal.

See **Abatement of Appeal—Civil.**

MORESHWAR *v.* KUSHABA...**I. L. Rep. 2 Bom. 248.**

PURCHASER OF EQUITY OF REDEMPTION BEFORE FORECLOSURE PROCEEDINGS ENTITLED TO NOTICE—Beng. Reg. XVII. of 1806, § 8.

See **Mortgage. 13.**

NORENDER *v.* DWARKA LAL...**L. Rep. 5 I. A. 18 ; I. L. Rep. 3 Cal. 397.**

Digitized by Google

PURCHASER AT EXECUTION SALE —Assignment by.

See **Hindu Law—Sale of Land.**

See **Sale in Execution of Decree. 1.**

GOVIND *v.* GOVIND...**I. L. Rep. 1. Bom. 500.**

—— Liability of—for Government Revenue falling due between Purchase and Confirmation.

See **Sale in Execution of Decree. 3.**

BHYRUB CHUNDER *v.* SOUDAMINI... **I. L. Rep. 2 Cal. 141.**

—— Obstruction to.

See **Sale in Execution of Decree. 12.**

HARASATOOLLAH *v.* BROJONATH GHOSE...**I. L. Rep. 3 Cal. 729.**

—— Period from which the Title of—dates.

See **Sale in Execution of Decree. 3.**

BHYRUB CHUNDER *v.* SOUDAMINI... **I. L. Rep. 2 Cal. 141.**

—— Right of—to apply for Possession accrues on Date of Certificate, not of Confirmation of Sale.

See **Limitation. 96.**

BASAPA *v.* MARYA...**I. L. Rep. 3 Bom. 433.**

—— Right of—to recover Purchase Money on Sale being set aside or Decree reversed before Confirmation of Sale.

See **Sale in Execution of Decree. 13. 21.**

MAKUNDI LAL *v.* KAUNSILA...**I. L. Rep. 1 All. 568.**

BASAPPA *v.* DUNDAYA...**I. L. Rep. 2 Bom. 540.**

See **Sheriff's Sale. 1. 2. 4.**

DORAB ALLY KHAN *v.* KHAJAH MOHEEOODEEN...**I. L. Rep. 1 Cal. 55 ; I. L. Rep. 3 Cal. 806 ; L. Rep. 5 I. A. 116.**

FRAMJI *v.* HORMASJI.....**I. L. Rep. 2 Bom. 258.**

—— Right of—under Act VIII. of 1859 to recover Purchase Money on Eviction.

See **Civil Procedure Code, Act X. of 1877, § 315.**

In the matter of the Petition of MULO.....**I. L. Rep. 2 All. 299.**

PURCHASER AT EXECUTION SALE UNDER DECREE AGAINST REPRESENTATIVE OF DECEASED MAHOMEDAN, RIGHT OF.

See **Sale in Execution of Decree. 20.**

HENDRY *v.* MUTTY LALL DHUR .. **I. L. Rep. 2 Cal. 395.**

PURCHASER OF FAMILY PROPERTY AT SALE IN EXECUTION OF PERSONAL DECREE AGAINST FATHER—Right of.

See **Sale in Execution of Decree. 10. 15.**

VENKATTASAMI NAIK *v.* KUPPAIYAN...**I. L. Rep. 1 Mad. 354.**

VENKATARAMAYYAN *v.* VENKATASUBBRAMANIA...**Ibid. 358.**

PURCHASER FROM GRANTEE OF MORTGAGOR—Priority of Purchaser at Sale in Execution of Decree on Mortgage over.

See **Mortgage. 6.**

MUTHORA NATH *v.* CHUNDERMONEY...**I. L. Rep. 4 Cal. 817.**

PURCHASER OF MONEY DECREE OBTAINED ON MORTGAGE BOND—Right of.

See **Mortgage. 40.**

GANPAT RAI *v.* SARUPI.....**I. L. Rep. 1 All. 446.**

PURCHASER FROM NEXT OF KIN—Right of—to apply for Revocation of Probate.

See **Probate. 3.**

KOMOLLOCHURN *v.* NILRUTTEN... **I. L. Rep. 4 Cal. 360.**

PURCHASER WITH NOTICE.

See **Mortgage. 31.**

DEBI DUTT SAHOO *v.* SUBOODRA BIBEE...**I. L. Rep. 2 Cal. 283.**

—— Of Charitable Trust.

See **Hindu Law—Will. 10.**

MANIKLALL *v.* MANIKSHA...**I. L. Rep. 1 Bom. 269.**

Digitized by Google

PURCHASER WITH NOTICE—*contd.*

—— Of Claim of Married Woman to Property sold as being her Separate Property.

See **Married Woman's Separate Property. 3.**

BERESFORD *v.* HURST...**I. L. Rep. 1 All. 772.**

—— Of Claim to Maintenance by Hindu Widow.

See **Hindu Law—Maintenance of Widow. 1. 7. 13.**

ADHIRANEE N. COOMARY *v.* SHONA MAHADAI.....**I. L. Rep. 1 Cal. 365.**

JOHURRA BIBEE *v.* SREEGOPAL MISSER.....**Ibid. 470.**

LAKSHMAN *v.* SATYABHAMABAI...**I. L. Rep. 2 Bom. 494.**

—— From Purchaser without Notice.

See **Equitable Mortgage.**

DAYAL JAIRAZ *v.* JIVRAZ RATANSI. **I. L. Rep. 1 Bom. 287.**

And *see* RAJU BALU *v.* KRISHNARAV... **I. L. Rep. 2 Bom. 273, 292.**

PURCHASER FROM OFFICIAL ASSIGNEE IN INSOLVENCY—Of Manager of Joint Hindu Family carrying on Joint Ancestral Trade, Title of.

See **Hindu Law—Maintenance of Widow. 7.**

JOHURRA BIBEE *v.* SREEGOPAL MISSER...**I. L. Rep. 1 Cal. 470.**

PURCHASER PENDENTE LITE.

See **Abatement of Appeal—Civil. 1.**

MORESHWAR *v.* KUSHABA...**I. L. Rep. 2 Bom. 248.**

See **Lis pendens.**

LALA KALI PROSAD *v.* BALI SINGH. **I. L. Rep. 4 Cal. 789.**

See **Mahomedan Law—Right of Creditors to follow the Estate of a Debtor into the hands of a Purchaser from the Heir.**

BAZAYET HOSSEIN *v.* DOOLI CHAND...**I. L. Rep. 4 Cal. 402.**

PURCHASER AT REVENUE SALE FOR ARREARS OF RENT—Right of—to Recover Purchase Money on Sale being set aside.

See **Setting aside Sale of Superior Tenure, Effect of.**

SREENARAIN BAGCHEE *v.* SMITH .. **I. L. Rep. 4 Cal. 807.**

See **Sale in Execution of Decree. 17.**

RAM THUL SINGH *v.* BISESWAR LALL SAHOO.....**L. Rep. 2 I. A. 131.**

PURCHASER AT SALE FOR ARREARS OF REVENUE—Right of —to Enhance Rent.

See **Enhancement of Rent. 1.**

PURMANUND ASRUM *v.* ROOKINEE GOOPTANI.....**I. L. Rep. 4 Cal. 793.**

PURCHASER AT SALE IN EXECUTION OF DECREE — On Mortgage —Right of.

See **Emblements.**

LAND MORTGAGE BANK *v.* VISHNU.....**I. L. Rep. 2 Bom. 670.**

See **Mortgage. 1. 6.**

MUTHORA NATH PAL *v.* CHUNDERMONEY DABIA...**I. L. Rep. 4 Cal. 817.**

SHRINGAPURE *v.* PETHE...**I. L. Rep. 2 Bom. 662.**

—— On Specially Registered Mortgage Bond—Right of.

See **Sale in Execution of Decree. 5.**

AKHE RAM *v.* NAND KISHORE...**I. L. Rep. 1 All. 263.**

—— Against Undivided Member of Undivided Hindu Family.

See the Index heading **Alienation of Ancestral Property — by Sale in Execution of Decree against a Member of an Undivided Family.**

Digitized by Google

PURCHASER AT SALE IN EXECUTION OF MONEY DECREE UNCONNECTED WITH HIS MORTGAGE, OBTAINED BY MORTGAGEE—Notice of Mortgage—Right of Purchaser.

See **Mortgage. 3.**

TUKARAM *v.* RAMCHANDRA... **I. L. Rep. 1 Bom. 314.**

See **Sheriff's Sale. 3.**

BHUGGOBUTTY DOSSEE *v.* SHAMACHURN BOSE...**I. L. Rep. 1 Cal. 337.**

PURCHASER AT SALE IN EXECUTION OF PERSONAL DECREE AGAINST A HINDU WIDOW—Rights of—and of Reversionary Heir.

See **Personal Decree against a Hindu Widow.**

BAIJUN DOOBEY *v.* BRIJ BHOOKUN .. **L. Rep. 2 I A. 275; I. L. Rep. 1 Cal. 133.**

See **Sale in Execution of Decree. 19.**

ALUKMONEE *v.* BANEE MADHUB .. **I. L. Rep. 4 Cal. 677.**

PURCHASER AT SALE IN EXECUTION OF SIMPLE MONEY DECREE OBTAINED ON MORTGAGE.

See **Sale in Execution of Decree. 4. 9.**

KHUB CHAND *v.* KALIAN DASS... **I. L. Rep.1 All. 240.**

BALWANT SINGH *v.* GOKARAN PRASAD.....**Ibid. 433.**

See **Mortgage. 40.**

GANPAT RAI *v.* SARUPI...**I. L. Rep. 1 All. 446.**

PURCHASER AT SALE BY SHERIFF UNDER WRIT OF FIERI FACIAS—Right of—to recover Purchase Money on Eviction, on Sale being declared Void.

See **Sheriff's Sale. 1. 2. 4.**

DORAB ALLY KHAN *v.* KHAJAH MOHEEOODDEEN...**I. L. Rep. 1 Cal. 55; I. L. Rep. 3 Cal. 806 ; L. Rep. 5 I. A. 116.**

FRAMJI *v.* HORMASJI...**I. L. Rep. 2 Bom. 258.**

PURCHASER OF SHARE IN A MAHAL—Suit by—for Profits of Unassessed *Sir* Lands.

See **Suit for Profits.**

MUHAMMAD ALI *v.* KALIAN SINGH. **I. L. Rep. 1 All. 659**

PURCHASE BY UNRECORDED CO-PARTNER AT SALE FOR ARREARS OF REVENUE—Takes subject to Incumbrances then existing.

See **Act XI. of 1859, § 53.**

ABDOOL BARI *v.* RAMDASS CONDOO. **I. L. Rep. 4 Cal. 607.**

PUTNEE TALOOK—Dar Putnee — *Sale—Act X. of* 1859, § 105—*Reg. VIII. of* 1819, §§ 8 *and* 11—*Reg. I. of* 1820.] Under the description " putnee talook" and " dar-putnee talook," it must be *primâ facie* intended that the tenure called a putnee tenure was a tenure transferable by sale, and upon the creation of which it was stipulated by the terms of the engagements interchanged that in case of an arrear occurring, the estate might be brought to sale free from incumbrances. According to the effect of § 105, Act X. of 1859, Reg. VIII. of 1819, §§ 8 and 11, and probably also Reg. I. of 1820, the effect of the sale of such a talook for arrears of rent is to destroy all incumbrances which have been created by the putneedar, *e.g.*, a dar-putnee tenure. BRINDABUN CHUNDER SIRCAR CHOWDHRY *v.* BRINDABUN CHUNDER DEY CHOWDHRY...**L. Rep. 1 I. A. 178 ; 21 W. R. 324 ; 13 Beng. L. R. 408, 1874.**

PUTNEE TENURE, SALE OF, FOR ARREARS OF RENT—Suit to set aside Sale—Publication of Notice, Date of.

See **Beng. Reg. VIII. of 1819, § 8, Cl. 2. 3.**

MATUNGEE CHURN *v.* MOORRARY MOHUN...**I. L. Rep. 1 Cal. 175.**

QUALIFIED PRIVILEGE.

See **Libel. 2.**

HINDE *v.* BAUDRY...**I. L. Rep. 2 Mad. 13.**

QUESTION OF PROPRIETARY RIGHT—Appeal to Judge.

See **Act XVIII. of 1873, § 93. 3.**

BISHESHUR SINGH *v.* MUSAMAT SUGUNDHI.....**I. L. Rep. 1 All. 366.**

Digitized by Google

QUESTION OF TITLE INCIDENTALLY DETERMINED IN SUIT COGNIZABLE BY SMALL CAUSE COURT—Gives no Right of Special Appeal in Suit Cognizable by Small Cause Court.

See **Appeal—Civil. 32.**

MOHESH MAHTO *v.* SHEIKH PIRU... **I. L. Rep. 2 Cal. 470.**

QUIET ENJOYMENT—Implied Covenant for—Landlord and Tenant—Patnidar and Darpatnidar.

See **Darpatni.**

S. C. **Landlord and Tenant. 7.**

TARACHAND *v.* RAM GOBIND...**I. L. Rep. 4 Cal. 778.**

RAILWAY ACT XVIII. OF 1854—Common Law Liability of Carriers—Contract Act IX. of 1872, §§ 151, 152—Loss by Robbery.

See **Railway Company. 2.**

KUVERJI *v.* THE G. I. P. RAILWAY Co...**I. L. Rep. 3 Bom. 109.**

—— § 3.

See **Railway Company. 4.**

PRATAB DAJI *v.* THE B. B. & C. I. RAILWAY Co...**I. L. Rep. 1 Bom. 52.**

—— § 11—Public Notice or Private Contract limiting Company's Liability — Gross Negligence—Misconduct.

See **Railway Company. 1. 3.**

SURUTRAM *v.* THE G. I. P. RAILWAY Co...**I. L. Rep. 3 Bom. 96.**

ISHWARDAS *v.* THE G. I. P. RAILWAY Co.....**Ibid. 120.**

—— § 15—Dangerous Goods — Omission to notify.

See **Negligence.**

LYELL *v.* GANGA DAI...**I. L. Rep. 1 All. 60.**

—— § 17.

See **Railway Company. 4.**

PRATAB DAJI *v.* THE B. B. & C. I. RAILWAY Co...**I. L. Rep. 1 Bom. 52.**

RAILWAY ACT XVIII OF 1854—*contd.*

—— § 43—Public Notice—Sanction by Government—Knowledge of Consignor.

See **Railway Company. 1.**

SURUTRAM *v.* THE G. I. P. RAILWAY Co...**I. L. Rep. 4 Bom. 96.**

RAILWAY COMPANY — *Railway Act XVIII. of* 1854, §§ 11, 43—*Carriers—Evidence—Burden of Proof.*] The defendants, having made arrangements with the Madras Railway Company for the through carriage of goods, received from the plaintiff's agent at Poona thirty bags of *jowari* to be carried thence to Bellary, on the Madras line, and delivered to the plaintiff's agent there. The "goods consignment note," which contained the contract and was signed by the plaintiff's agent at Poona, contained the following condition, of which he had due notice at the time of making the contract:—"The Company receive goods for conveyance to stations on other railways with which they have made arrangements to book through, *subject to the rules and regulations and rates and fares of the respective Companies over whose lines the goods may pass.*" On reaching Raichore the bags of *jowari* were transferred from the defendants' wagon, in which they had left Poona, into a wagon of the Madras Railway Company. One bag was subsequently lost; but the remaining twenty-nine bags arrived and were unloaded in good condition at Bellary on the 19th September 1877. No steps were taken, either by the defendants or by the Madras Railway Company, to give information of the arrival of the bags to the consignee, and he never received them. The plaintiff sued to recover their value. The defendants pleaded, 1st, that under a rule of the Madras Railway Company in force at the time of the making of the contract between the plaintiff and defendants, delivery was complete the instant the bags were unloaded at Bellary; and, 2ndly, that the plaintiff's agent at Bellary did not apply for the goods, but allowed them to remain in the station-yard until they became rotten by rain, and were destroyed by order of the Collector some time in November. The Madras Railway Company had issued a public notice of the above rule to this effect:—"The Madras Railway Company hereby give notice that they will not be responsible for loss of, or damage to grain after it has been unloaded from the Company's wagons." The defendants sought to incorporate this notice into their contract with the plaintiff by virtue

Digitized by Google

RAILWAY COMPANY—*contd.*

of the conditions printed on their "goods consignment note."

Held, that the notice afforded no protection to the defendants, on the ground that it was invalid as a regulation for non-compliance with the provisions of § 43, Act XVIII. of 1854, inasmuch as it had not been sanctioned by the Local Government, and had not been posted up at all the stations of the Madras line of railway; and that it could not otherwise be binding on the plaintiff, as neither he nor his agents were shown to have had any knowledge of it at the time of entering into the contract with the defendants.

Held also, that the arrival of the goods at Bellary having been proved, the burden of proving that the goods were ready for delivery to the plaintiff for a reasonable time after their arrival, lay on the defendants, though no proof had been given of any application for delivery by the plaintiff within a reasonable time. It is the duty of Railway Companies in regard to goods which have reached their destination, to have them ready for delivery at the usual place for delivery until the owner, in the exercise of due diligence, can call for and receive them; and it is the owner's duty to call for and receive them in a reasonable time.

Semble, the object of § 11 of Act XVIII. of 1854 is to preclude Railway Companies from being able by any stipulation to escape from liability for loss or injury to articles or goods caused by the gross negligence or misconduct of their servants or agents. SURUTRAM BHAVA *v.* THE G. I. P. RAILWAY COMPANY. *Westropp*, C.J., and *Green*, J...**I. L. Rep. 3 Bom. 96, 1878.**

2. ——*Carriers—Contract Act IX. of* 1872, §§ 151, 152—*Act XVIII. of* 1854—*Act III. of* 1865.] The English Common Law rule under which common carriers are held liable as insurers of goods against all risks except the act of God or the King's enemies, is not now in force in India. In cases not met by the special provisions of Act XVIII. of 1854 and Act III. of 1865 the liability of carriers for loss or damage to goods entrusted to them is prescribed by §§ 151 and 152 of the Indian Contract Act (IX. of 1872).

The plaintiff's goods were being carried in a train of the defendants from Nandgaon to Egatpuri. During the journey the train was plundered by robbers, and the plaintiff's goods were stolen.

RAILWAY COMPANY—*contd.*

Held, that the defendants were entitled to the benefit of § 152 of the Indian Contract Act (IX. of 1872), and should be permitted to give evidence to show that the robbers were not the servants or agents of the defendants, and that the defendants (by their servants and agents) took as much care of the goods as a man of ordinary prudence would, under similar circumstances, take of his owu goods of the same bulk, quality and value as the goods in question. KUVERJI TULSIDASS *v.* THE G. I. P. RY. CO. *Westropp*, C.J., and *Sargent*, J.....**I. L. Rep. 3 Bom. 109, 1878.**

3. —— *Carriers—Burden of Proof of Negligence—Loss by Fire—Misdescription of Goods—Act III. of* 1865, § 9—*Act XVIII. of* 1854, § 11. The plaintiff caused to be delivered to the defendants, for carriage from Bombay to Oojein, certain goods, among which were twelve bags of sugarcandy. His agent, when signing the consignment note at the railway station, erroneously but without any fraudulent intention, described the contents of the bags as alum, for which a lower freight was charged by the defendants. The railway clerk received the goods, and gave a receipt note on which the following condition was printed:—"The company further give notice that they are not responsible for loss or damage arising from fire, the act of God, or civil commotion." In the course of the journey a fire broke out in the train, and a large protion of the plaintiff's goods, including ten bags of surgarcandy, was destroyed. In an action for damages for non-delivery:—

Held, 1st, that under the provisions of § 9 of the Carriers Act (III. of 1865) the burden of proving that the fire which occasioned the loss of his goods was caused by the gross negligence or misconduct of the servants or agents of the defendants, did not lie on the plaintiff, notwithstanding the condition on the receipt note.

2ndly. The misdescription, by the plaintiff's agent, of the twelve bags of surgarcandy as alum, did not exonerate the defendants from all liability to the plaintiff. The plaintiff, however, was only entitled to recover, in respect of the lost ten bags, the value of alum only, and not of surgarcandy; while the defendants, on the other hand, could not, in respect of the said ten bags, charge freight as for surgarcandy. ISHWARDASS GULABCHAND *v.* THE G. I. P. RY. CO. *Westropp*, C.J., and *Green*, J...**I. L. Rep. 3 Bom. 120, 1878.**

Digitized by Google

RAILWAY COMPANY—*contd.*

4. —— *Act XVIII. of* 1854, § 17—*Act XXV. of* 1871, § 2—*Ticket—Trespass.*] The plaintiff entered a carriage on the defendants' railway at Surat, to proceed to Bombay, but without a ticket. The omission by the plaintiff to procure a ticket arose from a mere mistake, and not from any intention of evading payment of his fare, or of travelling without a ticket. At Nowsari station he applied to the station master for a ticket to Bombay, and was refused, but was permitted by the defendants' servants to proceed in the train without a ticket. At Balsar the plaintiff again applied for, but failed to get a ticket, and the guard of the train put him into a carriage, warning him not to get out again, as the stoppages would be short. On arrival at Dhandu, the plaintiff applied to the station master for a ticket.

During a discussion between the plaintiff's master and the station master, the plaintiff, at the direction of his master, re-entered the train. Ultimately the station master refused to give the plaintiff a ticket, and ordered him out of the train, and on the plaintiff not coming out of the carriage, sent a sepoy, who forcibly removed the plaintiff from the carriage. The plaintiff not being able to obtain a ticket from the defendant's servants at Dhandu, and not being allowed to enter the train without one, was left behind at Dhandu, and was unable to go to Bombay before the departure of the next train, which involved a detention of twenty-four hours.

In an action to recover damages for the forcible and illegal removal of the plaintiff from the carriage, and for the illegal detention of the plaintiff at Dhandu station, and for the illegal refusal of the defendants to allow the plaintiff to proceed in the train to Bombay :—

Held, 1st—That the latter part of § 2 of Act XXV. of 1871 (amending § 1 of Act XVIII. of 1854), which provides that in case the traveller does not produce his ticket when demanded by the servants of the Company, he is to pay the fare or increased fare, applies only to the case of a person who has received a ticket and who will not or cannot produce it, and not a person, as in the plaintiff's case, travelling without having paid for and obtained a ticket, with no intention to defraud ; and did not prevent the Company from treating the plaintiff as a trespasser, he having started from Surat under circumstances which entitled the Company to treat him as such : for—

RAILWAY COMPANY—*contd.*

2nd.—Though a fraudulent intention is, by § 3 of Act XVIII. of 1854, made an essential condition of travelling on a railway without payment of the fare being dealt with as an offence, the absence of such intention does not make the entry into the carriage without such payment less unlawful, or of itself afford any ground for depriving the company of the right of putting an end to such unlawful occupation.

3rdly.—That the conduct of the railway officials at the intermediate stations between Surat and Dhandu, if it amounted to leave and license to the plaintiff to travel in the train without a ticket, could only operate until the train arrived at the next station.

4thly.—That there was no legal obligation on the station master at Dhandu to give the plaintiff a ticket. The common law right of a traveller to be conveyed by the carrier of passengers on his readiness and willingness to pay the usual fare, is subject to the condition that he offer himself as a passenger at a reasonable time and place.

A passenger by train has no right, on the arrival of the train at an intermediate station, either to require the station master to leave the platform, where he has special duties connected with the train, and return to his office for the purpose of procuring him a ticket ; or to require the distribution of tickets to be resumed on his behalf, which has been already closed for the public outside the station ; and that, therefore, the plaintiff's removal from the train was justifiable. PRATAB DAJI *v.* THE B. B. & C. I. RY. CO. *Westropp*, C.J., and *Sargent*, J...**I. L. Rep. 1 Bom. 52, 1875.**

RAILWAY, PASSENGER BY—Travelling without Ticket.

See **Railway Company. 4.**

PRATAB DAJI *v.* THE B. B. & C. I. RY. CO...**I. L. Rep. 1 Bom. 52.**

RAIN-WATER—Suit to establish a Right to an Easement as against a Neighbour of compelling him to receive the—from Plaintiff's Roof.

See **Easement. 2.**

MOHANLAL *v.* AMRATLAL...**I. L. Rep. 3 Bom. 174.**

Digitized by Google

RATEABLE DISTRIBUTION OF SALE PROCEEDS.

See **Civil Procedure Code, Act VIII. of 1859, §§ 270, 271.**

HASOON ARRA *v.* JAWADOONISSA. **I. L. Rep. 4 Cal. 29.**

RATIFICATION—By Adopted Son of Agreement made by Natural Father before Adoption in Derogation of his Rights.

See **Hindu Law—Adoption. 17.**

RAMASAWMI AIYAN *v.* VENKATARAMAIYAN...**L. Rep. 6 I. A. 196.**

RATIFICATION BY COMPANY OF PARTICULAR ACT OF DIRECTORS IN EXCESS OF AUTHORITY, NOT AN EXTENSION OF FUTURE AUTHORITY.

See **Powers of Directors to Borrow and Mortgage.**

IRVINE *v.* UNION BANK OF AUSTRALIA...**L. Rep. 4 I. A. 86; I. L. Rep. 3 Cal. 280.**

RATNAKARA, AUTHORITY OF.

See **Hindu Law — Authority of Writers. 5.**

MURARJI *v.* PARVATIBAI.....**I. L. Rep. 1 Bom. 177.**

RAZINAMA.

See **Sodi Razinama.**

VENKATESA *v.* SENGODA.....**I. L. Rep. 2 Mad. 117.**

—— Abandoning Miras Rights.

See **Miras. 3. 4.**

TARACHAND *v.* LAKSHMAN...**I. L. Rep. 1 Bom. 91.**

JOTI *v.* BALU ..... **Ibid. 208.**

—— Resigning Miras Lands cannot affect Previous Registered Mortgage by Mirasdar.

See **Miras. 5.**

RAMCHANDRA *v.* BHIMRAV...**I. L. Rep. 1 Bom. 577.**

READINESS AND WILLINGNESS TO DELIVER.

See **Contract. 1.**

FORBES *v.* TULLOCKCHAND MANOCKCHAND.....**I. L. Rep. 3 Bom. 386.**

READINESS AND WILLINGNESS TO DELIVER—*contd.*

—— Burden of Proof of — Goods carried by Railway Company, for a Reasonable Time after Arrival.

See **Railway Company. 1.**

SURUTRAM BHAYA *v.* THE G. I. P. RY. CO...**I. L. Rep. 3 Bom. 96.**

RE-ARRANGEMENT OF JURISDICTION WITHIN BRITISH TERRITORY.

See **Cession of Territory. 2.**

DAMODAR *v.* GANESH...**10 Bom. H. C. Rep. 37; I. L. Rep. 1 Bom. 367; L. Rep. 3 I. A. 102; L. Rep. 1 App. Ca. 332.**

See **Legislative Power of the Governor General in Council. 1. 2.**

EMPRESS *v.* BURAH...**I. L. Rep. 3 Cal. 63; I. L. Rep. 4 Cal. 172; L. Rep. 5 I. A. 178; L. Rep. 3 App. Ca. 889.**

REASONABLE AND PROBABLE CAUSE, WANT OF.

See **Act XVIII. of 1850. 2.**

COLLECTOR OF SEA CUSTOMS *v.* PUNNIAR CHITHAMBARAM ..**I. L. Rep. 1 Mad. 89.**

See **Champerty. 2.**

RAM COOMAR *v.* CHUNDER CANTO. **L. Rep. 4 I. A. 23; I. L. Rep. 2 Cal. 233.**

—— Malicious Arrest—Damages.

See **Damages. 4.**

RAJ CHUNDER *v.* SHAMA SOONDERI. **I. L. Rep 4 Cal. 583.**

RECEIPT — REGISTRATION OF — Acknowledgment of Receipt of more than Rs. 100 as Consideration for Sale of House requires Registration.

See **Registration. 12.**

VALAJI *v.* THOMAS...**I. L. Rep. 1 Bom. 190.**

Digitized by Google

RECEIPT—REGISTRATION OF—*contd.*

—— Receipt in Full or in Part for Money due on Mortgage of Immoveable Property—if operating or intended to be used as extinguishing or releasing, Mortgage wholly or in part—requires Registration.

See **Registration. 11. 13. 14. 22.**

MAHADAJI *v.* VYANKAJI.....**I. L. Rep. 1 Bom. 197.**

BASAWA *v.* KALAPA...**I. L. Rep. 2 Bom. 489.**

DALIP SING *v.* DURGA PRASAD.. **I. L. Rep. 1 All. 442.**

RECEIVER — PROPERTY IN THE HANDS OF—*Order on Receiver to sell—Attachment in Mofussil of Property in hands of Receiver.*] By a decree of the High Court obtained by *D. M.* in November 1871, in a suit on a mortgage brought by him against *B. C.* and *P. C.*, it was ordered that the suit should be dismissed against *P. C.*; that the amount found due on the mortgage should be paid to *D. M.* by *P. C.*; that the mortgaged property, some of which was in Calcutta and some in the Mofussil, should be sold in default of payment, and any deficiency should be made good by *B. C.* The property in Calcutta was sold under the decree, and did not realize enough to satisfy the decree. *D. M.* thereupon, in August 1873, obtained an order for the transfer of the decree to the Mofussil Court for execution: after the transfer *B. C.* died in December 1874, leaving a widow and an adopted son his representatives, against whom the suit was revived. The decree, however, was returned to the High Court unexecuted. In a suit for partition of the estate of *R. C.*, deceased, brought by *P. C.* against *B. C.* in the High Court, a decree was made, in February 1871, for an injunction to restrain *B. C.* from intermeddling with the estate or the accumulations, and for the appointment of the Receiver of the Court as receiver, to whom all parties were to give up quiet possession. *B. C.* was in that suit declared entitled to a moiety of the property in suit.

Held, on an application by *D. M.* to the High Court for an order that the Receiver should sell the right, title, and interest of the widow and son of *B. C.* in the estate in his hands to satisfy the balance of his debt, that *D. M.* was entitled to an order that their interest should be attached in the hands of the Receiver, and that the Receiver should proceed to sell the same.

RECEIVER — PROPERTY IN THE HANDS OF—*contd.*

Property in the hands of the Receiver of the High Court cannot be proceeded against by attachment in the Mofussil. HEM CHUNDER CHUNDER *v.* PRANKRISTO CHUNDER. *Pontifex*, J .....**I. L. Rep. 1 Cal. 403, 1876.**

RECOGNIZANCE — Cross-Examination of Witnesses on Proceedings for Forfeiture of.

See **Criminal Procedure Code, Act X. of 1872, § 502.**

EMPRESS *v.* NOBIN CHUNDER DUTT. **I. L. Rep. 4 Cal. 865.**

—— *Power of High Court to interfere when forfeited.*] The High Court had no power to reduce the amount of recognizances which have been forfeited, but in a case of hardship the matter should be referred to Government. *Nilmadhub Ghosal* (19 W. Rep., Cr. Rul. 1) and *Anon.* (1 Bom. H. C. Rep. 138) followed. EMPRESS *v.* NURUL HUQQ. *Ainslie* and *Broughton*, JJ...**I. L. Rep. 3 Cal. 757; 2 Cal. Rep. 408, 1878.**

RECORD IN APPEALABLE CASE—Substance of Evidence.

See **Summary Trial.**

EMPRESS *v.* KARAN SINGH...**I. L. Rep. 1 All. 680.**

RECORD OF RIGHTS — Jurisdiction of Civil and Revenue Courts in relation to.

See **Jurisdiction. 5.**

SUNDAR *v.* KHUMAN SINGH...**I. L. Rep. 1 All. 613.**

—— Trust created by Entry in.

See **Limitation. 27.**

PIARY LALL *v.* SALIGA.....**I. L. Rep. 2 All. 394.**

See **Trust. 1. 2.**

KAMAL SINGH *v.* BATUL FATIMA... **Ibid. 460.**

HARBHAJ *v.* GUMANI...**Ibid. 493.**

RECORDING EVIDENCE AFTER CLOSE OF CASE FOR DEFENCE.

See **Practice—Criminal. 1.**

EMPRESS *v.* BALDEO SAHAI...**I. L. Rep. 2 All. 253.**

RECORDING OPINION OF ASSESSORS—Acquittal without Taking or—no Ground for Revisional Interference.

See **Assessors.**

NARAIN DASS...**I. L. Rep. 1 All. 610.**

Digitized by Google

RECOVERY OF MONEYS UNDULY REALIZED IN EXECUTION.

See **Execution of Decree. 6.**

PARTAB SINGH *v.* BENI RAM...**I. L. Rep. 2 All. 61.**

REDEMPTION—Before Time fixed.

See **Kanam Mortgage.**

KESHAVA *v.* KESHAVA ...**I. L. Rep. 2 Mad. 45.**

—— Beng. Reg. XVII. of 1806, § 8—Time for Redemption One Year from Service of Notice of Foreclosure.

See **Mortgage. 13.**

NORENDER *v.* DWARKA LAL...**L. Rep. 5 I. A. 18 ; I. L. Rep. 3 Cal. 397.**

—— Conditional Decree.

See **Mortgage. 35. 36.**

—— Limitation—Acknowledgment of Mortgagor's Title made before Act XIV. of 1859.

See **Acknowledgment of Mortgagor's Title. 1.**

DAIA CHAND *v.* SARFARAZ ALI...**I. L. Rep. 1 All. 425.**

—— Limitation — Acknowledgment of Mortgagor's Title signed by Agent.

See **Acknowledgment of Mortgagor's Title. 3.**

RAHUMANI *v.* HULASA ... **I. L. Rep. 1 All. 642.**

—— Limitation — Acknowledgment of Mortgagor's Title—Signature by Mortgagees, as such, of Record of Rights and *Khatauni Shara Asamiwar.*

See **Acknowledgment of Mortgagor's Title. 1.**

DAIA CHAND *v.* SARFARAZ...**I. L. Rep. 1 All. 117.**

—— Limitation—Adverse Possession.

See **Mortgage. 37.**

—— Mortgage by Conditional Sale.

See **Mortgage. 12.**

THUMBASAWMY *v.* MAHOMED HOSSAIN...**L. Rep. 2 I. A. 241 ; I. L. Rep. 1 Mad. 1.**

—— By One of Several Mortgagors—Right to Contribution.

See **Contribution. 1.**

HIRA CHAND *v.* ABDAL ... **I. L. Rep. 1 All. 455.**

REDEMPTION—*contd.*

—— Of *Pernarthum* Mortgage.

See **Mortgage. 21.**

P. SHEKARI VARMA VALIA *v.* MANGALOM... **I. L. Rep. 1 Mad. 57.**

—— Right of—of *Birt* Tenures within the Talook purchased by the Mortgagee.

See **Mortgage. 15.**

RAJAH KISHENDATT *v.* RAJAH MUMTAZ ALI...**L. Rep. 6 I. A. 145.**

—— Right of—of One of Several Joint Mortgagors where Mortgagee has purchased Share of One of such Mortgagors.

See **Mortgage. 29.**

KURAY MAL *v.* PURAN MAL...**I. L. Rep. 2 All. 565.**

—— Right of—of Purchaser at Sale in Execution of Decree against Mortgagor.

See **Mortgage. 28.**

PHUL KUAR *v.* MURLI DHUR...**I. L. Rep. 2 All. 527.**

—— Suit for—*Onus Probandi.*

See **Onus Probandi. 6.**

RATAN KUAR *v.* JIWAN SINGH... **I. L. Rep. 1 All. 194.**

REDEMPTION SUIT—Conditional Decree in.

See **Mortgage. 36. 37.**

—— Jurisdiction—Lands situated in Different Districts.

See **Jurisdiction. 4.**

GIRDHARI *v.* SHEORAJ.....**I. L. Rep. 1 All. 431.**

—— Set-off of Costs against Mortgage Money.

See **Mortgage. 38.**

RE-ENTRY BY MORTGAGOR—On Satisfaction of Prior Mortgagee, who had ousted Second Mortgagee—Cause of Action to Second Mortgagee.

See **Dispossession of Second by First Mortgagee.**

NARAIN SINGH *v.* SHIMBHOO SINGH.. **L. Rep. 4 I. A. 15.**

Digitized by Google

REFERENCE TO COMMISSIONER FOR TAKING ACCOUNTS, EFFECT OF.

See **Account. 2.**

WATSON *v.* AGA MEHEDEE SHERAZEE.....**L. Rep. 1 I. A. 346.**

REFERENCE FOR CONFIRMATION OF SENTENCE OF DEATH—Power of High Court on—to consider the Jurisdiction of Sessions Court, after Order of Division Bench to Magistrate (who declined to inquire into Offence for want of Jurisdiction) to inquire.

See **Criminal Procedure Code, Act X. of 1872, § 297. 7.**

EMPRESS *v.* SARMUKH SINGH...**I. L. Rep. 2 All. 218.**

REFERENCE TO FULL BENCH—*Practice—Conflict of Opinion between Individual Judges.*] A question arising from a conflict of opinion between individual Judges is not, properly speaking, the subject of a reference to a Full Bench. RAJ KOOMAR SINGH *v* SAHEBZADA ROY...**I. L. Rep. 3 Cal. 20, 1877, F. B.**

S. C. under **Right to Sue. 5.**

REFERENCE — HIGH COURT AS A COURT OF—Power of — to alter Sentence.

See **Criminal Procedure Code, Act X. of 1872, § 288.**

REG. *v.* BALAPPA...**I. L. Rep. 1 Bom. 639.**

REFORMATION OF SUNNUD.

See **Act I. of 1869. 2.**

WIDOW OF SHUNKUR SAHAI *v.* RAJAH KASHI PERSAD...**L. Rep. 4 I. A. 198.**

RE-FORMATION OF SUBMERGED LANDS—Extinguishment of Right of Occupancy by Non-Payment of Rent during Submergence.

See **Extinguishment of Right of Occupancy.**

HEMNATH DUTT *v.* ASHGUR SINDAR...**I. L. Rep. 4 Cal. 894.**

—— Where land which has been submerged reforms, and is identified as having formed part (even by accretion) of a particular estate, the owner of that estate is entitled to it. *Lopes* v. *Muddun Mohun Thakoor* (13 Moo. I. A. 467; S. C. 5 Beng. L. Rep. 521) approved. HURSUHAI SINGH. *v.* SYUD LOOTF ALI KHAN...**L. Rep. 2 I. A. 28; 14 Beng. L. R. 268; 23 W. R. 8, 1874.**

RE-FORMATION OF SUBMERGED LANDS—*contd.*

See **Alluvial Lands. 1.**

RADHA PROSHAD SINGH *v.* RAM COOMAR SINGH...**I. L. Rep. 3 Cal. 796.**

REFUND—Of Amount levied in Irregular Execution.

See **Execution of Decree. 5.**

See **Estoppel. 2.**

GOVIND *v.* RAMCHANDER...**I. L. Rep. 3 Bom. 42.**

REFUND OF BONUS.

See **Darpatni.**

TARACHAND *v.* RAM GOBIND...**I. L. Rep. 4 Cal. 778.**

REFUND OF COSTS PAID UNDER A DECREE SUBSEQUENTLY REVERSED — *Interest on Costs.*] The plaintiff's suit had been dismissed with costs by the High Court on its Original Jurisdiction, and this decree was confirmed with costs on appeal, and the plaintiff had paid the costs, with interest, of those decrees. On appeal to the Privy Council the decrees of the High Court were reversed and the case remanded for trial; the costs of appeal to be costs in the cause to be dealt with by the High Court, but no mention being made of the costs already paid by the plaintiff to the defendants.

Held, that the plaintiff was entitled to apply to the Court which made the original decree for a refund of the costs already paid under the decrees reversed, and need not apply to the Privy Council; but he was not entitled to interest on those costs from the date of payment thereof, but only from the date of the order directing repayment.....DORAB ALI KHAN *v.* ABDOOL AZEEZ. *Pontifex*, J...**I. L. Rep. 4 Cal. 229, 1878.**

REFUND OF FINE—On Quashing Conviction.

See **High Court Criminal Procedure, Act X. of 1875, § 147. 3.**

REG. *v.* HADJI JEEBUN BUX.....**I. L. Rep. 1 Cal. 354.**

Digitized by Google

REFUSAL TO CONFIRM AN AWARD—Appeal against a.

See **Appeal—Civil. 34.**

HOWARD *v.* WILSON...**I. L. Rep. 4 Cal. 231.**

REFUSAL TO GIVE RECEIPT FOR SUMMONS.

See **Penal Code, § 173.**

BHOOBUNESHWAR DUTT..... **I. L. Rep. 3 Cal. 621.**

REFUSAL TO REGISTER—Appeal.

See **Appeal—Civil. 10.**

SYUD MAHOMET HOSSEIN *v.* HADZI ABDULLA.. **I. L. Rep. 3 Cal. 727.**

—— Person "claiming under a Document."

See **Registration. 27.**

BISH NATH.....**I. L. Rep. 1 All. 318.**

—— Review of—by Zillah Judge.

See **Practice—Privy Council. 8**

MEER REASUT HOSSEIN *v.* HADJI ABDOOLLAH...**L. Rep. 1 I. A. 72.**

And *see* **L. Rep. 3 I. A. 221; I. L. Rep. 2 Cal. 131.**

Under **Review. 8.**

REFUSAL TO ORDER REGISTRATION—Review of.

See **Review. 8.**

REASUT HOSSEIN *v.* HADJI ABDOOLLAH...**L. Rep. 3 I. A. 221; I. L. Rep. 2 Cal. 131.**

REFUSAL TO RE-HEAR APPEAL HEARD EX-PARTE.

See **Appeal—Civil. 37.**

RAMJAS *v.* BAIJ NATH...**I. L. Rep. 2 All. 567.**

REGISTERED MORTGAGE—Priority of—over Subsequent Registered Sale with Possession.

See **Registration. 3.**

See **Mortgage. 3.**

SHRINGAPURE *v.* PETHE.....**I. L. Rep. 2 Bom. 662.**

REGISTERED MORTGAGE WITH POSSESSION—Priority between—and Prior Unregistered Mortgage of which Registration Unnecessary.

See **Mortgage. 5.**

TUKARAM *v.* RAMCHANDRA...**I. L. Rep. 1 Bom. 314.**

REGISTERED AND UNREGISTERED DOCUMENTS — Priority between—of which Registration Optional.

See **Registration. 20.**

AHMAD BUKSH *v.* GOBINDI...**I. L. Rep. 2 All. 216.**

REGISTERED AND UNREGISTERED DOCUMENTS, PRIORITY BETWEEN—Registered Deed of which Registration Compulsory, and Unregistered Deed of which Registration Optional under Act VIII. of 1871.

See **Registration. 25. 26.**

BHOLA NATH *v.* BALDEO.....**I. L. Rep. 2 All. 198.**

OOGHRA SINGH *v.* ABLAKHI KOOER. **I. L. Rep. 4 Cal. 536.**

REGISTERED TALUKDAR MAY BE TRUSTEE.

See **Act I. of 1869. 2. 5. 6. 7.**

WIDOW OF SHUNKUR SAHAI *v.* RAJAH KASHI PERSAD.....**L. Rep. 4 I. A. 198.**

THAKOOR HARDEO BUX *v.* THAKOOR JAWAHIR SINGH.....**L. Rep. 4 I. A. 178; I. L. Rep. 3 Cal. 522; L. Rep. 6 I. A. 161.**

THAKUR SHERE BAHADUR SINGH *v.* THAKURANI DARIAO KUAR. **I. L. Rep. 3 Cal. 645.**

REGISTRATION—In Absence of Vendor.

See **Registration. 2.**

—— Of Acknowledgment of Receipt of more than Rs. 100 as Consideration on account of Sale of Immoveable Property, Necessary.

See **Registration. 12.**

—— Admission by some of the Parties to a Deed of their Execution, but Denial by them of its Execution by the other Parties—Procedure for Registering Officer.

See **Registration. 23.**

Digitized by Google

REGISTRATION—*contd.*

—— Of Agreement (charging Land) to compromise a Suit.

See **Registration. 5.**

—— Of Agreement to Create an Interest in Immoveable Property.

See **Registration. 12.**

—— Of Agreement by Correspondence to Purchase a Future Interest in Land.

See **Registration. 10.**

—— Of Assignment of Decree for Sale of Mortgaged Property.

See **Registration. 15.**

—— Of Assignment of Mortgage.

See **Assignment of Mortgage.**

GANPAT *v.* ADARJI...**I. L. Rep. 3 Bom. 312.**

—— Of Assignment for less than Rs. 100 of Mortgage for more than Rs. 100.

See **Registration. 7.**

—— Certificate of—Effect of.

See **Registration. 23.**

—— Of Certificate of Sale.

See **Registration. 4.**

—— Of Compromise of Suit.

See **Registration. 5.**

—— Computation of Value of Interest created in Immoveable Property for purposes of.

See **Registration 1. 7. 8. 9. 16 to 21.**

—— Of Deed of Partition.

See **Registration. 9.**

See **Evidence. 18.**

KACHUBHAI *v.* KRISHNABHAI...**I. L. Rep. 2 Bom. 635.**

—— Of Deed of Sale executed, and presented for Registration, by Vendor alone.

See **Registration. 27.**

—— Of a *Dowl-Fehrist*,

See **Dowl-Fehrist.**

GUNGAPERSAD *v.* GOGUN SINGH... **I. L. Rep. 3 Cal. 322.**

REGISTRATION—*contd.*

—— Of Indorsement by Judge on Mortgage Deed at Sale of Mortgaged Property in Execution of Decree on Mortgage.

See **Registration. 5.**

—— Of Indorsement on Deed of Sale of House Returning Deed owing to Purchaser's Inability to pay.

See **Incomplete Contract.**

UMEDMAL *v.* DAVU...**I. L. Rep. 2 Bom. 547.**

—— Of Lease.

See **Lease.**

APA BUDGAVDA *v.* NARHARI ANNAJEE...**I. L. Rep. 3 Bom. 21.**

—— Of Lease—Madras Act VIII of 1865, § 3—*Puttah.*

See **Registration. 11.**

—— Of Letter amounting to Release.

See **Registration. 6.**

—— Of Memorandum of Association.

See **Agreement to take Shares in a Company.**

ANANDJI *v.* THE NERIAD S. & W. Co...**I. L. Rep. 1 Bom. 320.**

—— May be *completed* at any Time.

See **Registration. 2.**

—— Priority between Registered Mortgage and Subsequent Registered Sale with Possession.

See **Registration. 3.**

—— Priority between Registered Mortgage with Possession without Notice of Prior Unregistered Mortgage of which Registration Optional.

See **Mortgage. 5.**

TUKARAM *v.* RAMCHANDRA...**I. L. Rep. 1 Bom. 314.**

—— Priority between Registered Deed of which Registration Compulsory under Act VIII. of 1871, and Unregistered Deed of which Registration Optional under same Act.

See **Registration. 25. 26.**

Digitized by Google

REGISTRATION—*contd.*

—— Priority between Registered Deed of which Registration Compulsory under Act III. of 1877, and Unregistered Deed of which Registration Optional under Act VIII. of 1871.

See **Registration. 30.**

—— Priority between Registered and Unregistered Documents of which Registration Optional.

See **Registration. 20.**

—— Priority between Registered Deed under Act XX. of 1866 and Deed which might have been but was not Registered under Act XIX. of 1843.

See **Registration. 32.**

See **Mortgage. 25.**

VENKATANARASAMMAL *v.* RAMIAH...**I. L. Rep. 2 Mad. 198, 1879.**

—— Of Receipt from Mortgagee to Mortgagor.

See **Registration. 13. 14. 22.**

—— Refusal to Register.

See **Registration. 27.**

—— Refusal to Register—Appeal.

See **Appeal—Civil. 10.**

SYED MAHOMET *v.* HADZI ABDULLAH...**I. L. Rep. 3 Cal. 727.**

—— Refusal to Register—Review of.

See **Practice—Privy Council. 8. 3.**

MEER REASUT HOSSEIN *v.* HADJI ABDOOLLAH...**L. Rep. 1 I. A. 72.**

See **Review. 8.**

S. C. **L. Rep. 3 I. A. 221; I. L. Rep. 2 Cal. 131.**

—— Of Release.

See **Registration. 6.**

—— Suit to enforce.

See **Registration. 31.**

—— Of *Sulehnama.*

See **Registration. 5.**

—— Of Transfer of Shares.

See **Presidency Banks Act XI. of 1876, §§ 17, 21.**

MOTHOORMOHUN ROY *v.* BANK OF BENGAL...**I. L. Rep. 3 Cal. 392.**

REGISTRATION—*contd.*

—— Unregistered Document — Admissibility of—in Evidence in Suit for Money.

See **Registration. 24.**

1. —— *Optional Registration — Principal and Interest.*] A bond for the payment of Rs. 83-8-0 on demand with interest at 2 *per cent. per mensem*, which charges immoveable property with such payment, does not, though the amount due on it when demand is made may exceed Rs. 100, purport to create an interest in immoveable property of the value of Rs. 100 within the meaning of the Registration Act, and its registration is therefore optional. KARAN SINGH *v.* RAM LAL. *Turner* and *Oldfield*, JJ.....**I. L. Rep. 2 All. 96, 1878.**

2. —— *Defect in Procedure — Absence of Vendor—Act XX. of* 1866, §§ 36, 84, 88.] A deed of sale executed on the 10th of July 1868 was presented for registration on 22nd October 1868, *i.e.*, within the due period of four months from the date of its execution. The vendors not appearing before the registering officer, were summoned by him under the provisions of § 37 of Act XX. of 1866, and on their failure to attend on the day fixed for their appearance, the registering officer, after satisfying himself by evidence that the vendors had executed the deed, registered it. After certain proceedings, in which the deed was held by the District and High Courts to be an unregistered deed, and in which the High Court of the North-West Provinces directed its due registration, the deed was again registered on the 16th and 25th of May and the 5th of June 1871.

Held, that though the High Court in ordering the latter registration had acted without jurisdiction under § 84 of Act XX. of 1866 (the High Court of the N. W. P. having no ordinary Original Civil Jurisdiction), yet such registration was valid and in time. Though an instrument must be presented for registration within four months from the date of its execution, no time is fixed by the Act within which a deed presented and accepted for registration must be registered.

Semble, as to the former registration, though a Registrar acts in contravention of § 36 if he registers a deed without the vendors having appeared before him, it does not follow that such registration is thereby rendered null and void. SHA MUKHUN LALL PANDAY *v.* SHA KOONDUN LALL. **L. Rep. 2 I. A. 210; 15 Beng. L. R. 228; 24 W. R. 75, 1875.**

Digitized by Google

REGISTRATION—*contd.*

3. —— *Mortgage—Subsequent Sale—Possession.*] A registered mortgage is entitled to priority over a subsequent registered sale though accompanied by possession.

D. in 1864, by a duly registered deed, mortgaged to the plaintiff certain lands. The deed provided for the sale of the lands on failure in the repayment of the sum advanced. On default made, the plaintiff sued to enforce this provision. Pending the suit *D.* sold the land to the defendant, who got his deed of sale registered, and entered into possession. The plaintiff subsequently obtained a decree, and at the sale in execution became himself the purchaser The plaintiff then sued the defendant to recover possession.

Held, that he was entitled to recover. His rights as mortgagee were made as effectual by registration as by possession, so as to prevent their being impaired by subsequent transactions, and included the right of bringing the whole property, as it subsisted at the time of the mortgage, to sale. It was so brought to sale, and the purchaser in execution acquired a right free from any created subsequently to the mortgage, and subject to it. S. B. SHRINGAPURE *v.* S. B. PETHE. *West* and *Pinhey*, JJ .. **I. L. Rep. 2 Bom. 662, 1878.**

4. —— *Certificate of Sale—Endorsement by Judge on Mortgage Deed.*] In a suit to recover certain property purchased by the plaintiffs at a sale in execution of a decree on a mortgage, they relied, as proof of their title, on an endorsement on the mortgage deed, made and signed by the Subordinate Judge, in the following terms :—" This deed was purchased on the 10th December 1875 at a public sale held in the Court of Dehra Dun, by Narain Das and Kanahia Lal (plaintiffs), for Rs. 2,000, under special orders passed by the Court on the 23rd November 1875, in the case of Narain Das and Kanahia Lal against Richard Powell for self and as guardian of the heir in possession of the estate left by Matilda Powell ":—

Held by *Spankie*, J.—That the endorsement operated as a certificate of sale, and could not be regarded simply as an order of Court, and, as it conferred upon the purchasers the rights of the mortgagee, and gave them an interest in immoveable property exceeding Rs. 100 in value, required registration.

By *Oldfield*, J.—That the endorsement by which the deed of mortgage was assigned to the plaintiffs as purchasers of it at auction sale, was an instrument which required registration. KANAHIA LAL *v.* KALI DIN...**I. L. Rep 2 All. 392.**

5. —— Sulehnama—*Mortgage—Agreement creating a Charge on Immoveable Property.*] Certain immoveable property having been attached in execution of a decree, objections to the attachment were raised by third persons who claimed the property. Subsequently the pleaders for the decree-holder, the judgment-debtor, and the claimants, respectively, in pursuance of an arrangement come to by all parties, jointly filed in Court a *sulehnama*, by which the objectors, who had purchased the judgment debtor's rights in the attached property, and had obtained possession, undertook to pay the amount of the decree, which exceeded Rs. 100, within one year ; and agreed that in default of such payment, the property should be sold by auction in satisfaction of the decree ; and that until payment the property should be hypothecated, the objectors agreeing not to transfer the same. The decree-holder having sued upon this document, claiming to recover the amount of the decree by the sale of the property comprised in it :—

Held, that the document required registration and not being registered no suit was maintainable upon it.

Cases decided by the High Court in which the *sulehnama* having been relied on, not as containing the hypothecation itself, but as evidence only of a separate parol agreement, or in which a decree having been made in accordance with the terms of the compromise, was held not to require registration, distinguished. SURJU PRASAD *v.* BHAWANI SAHAI. *Stuart*, C.J., and *Spankie*, J.....**I. L. Rep. 2 All. 481, 1879.**

6. —— *Release — Letter amounting to Release—Stamp—Admission in Evidence of Unstamped Document — Objection first raised in Court of Appeal—Fraud.*] *A.* executed a bond to *B.*, mortgaging, among other property, the village of Chand Kera. He subsequently sold this village to *C.*, concealing the fact that it had been already mortgaged to *B.* When *C.* discovered this fact he threatened to prosecute *A.*, who then wrote to *B.* proposing to substitute a share in the village of Kelsa, which he alleged belonged to him, as security in the place of the village Chand Kera. *B.* accepted the proposal by letter which was neither stamped nor registered. It turned out that the share in the village of Kelsa did not belong to *A.*, but to another

Digitized by Google

REGISTRATION—*contd.*

person. *B.* having sued upon his bond, claiming to enforce it upon the village of Chand Kera, *A.* set up as a defence that *B.* had accepted his proposal to substitute the share of the village of Kelsa for the village of Chand Kera, tendered in evidence *B.*'s letter, the reception of which was not objected to, and it was admitted and acted on by the Court of first instance:—

Held, that the letter operated as a release, and purported to extinguish a contingent interest in immoveable property of the value of more than Rs. 100, and therefore required to be both stamped and registered before it could be received in evidence.

Held, also, that the objection as to the want of stamp on a document may be properly taken for the first time on regular appeal, and that the Appellate Court is bound to entertain it, but may direct that the document be stamped and the penalty imposed.

Semble, the Appellate Court is bound to notice and entertain the objection of the want of registration of a document requiring registration, which has been received without objection by the Court below.

Mark Riddell Currie v. *V. S. Mutu Ramen Chetty* (3 Beng. L. Rep. 126) discussed. *Basawa* v. *Kalkapa* (I. L. Rep. 2 Bom. 489) approved. SAFDAR ALI KHAN *v.* LACHMAN DAS. *Pearson* and *Straight*, JJ..... **I. L. Rep. 2 All. 554, 1879.**

See KHOOB LALL *v.* JUNGLE SING....**I. L. Rep. 3 Cal. 787.**

Under **Appeal—Civil. 20.**

And AFZAL-UN-NISSA *v.* TEJ BAN...**I. L. Rep. 1 All. 725.**

Under **Error not affecting the Merits.**

7.——*Act XX of* 1866, § 17—*Assignment of Mortgage.*] A deed of assignment for a consideration of less than Rs. 100, of a mortgage for a consideration of Rs. 100 or upwards, does not need registration. SATRA KUMAJI *v.* VISRAM HASGAVDA. *Westropp*, C.J., and *N. Harridas*, J..... .....**I. L. Rep. 2 Bom. 97, 1877.**

8. —— *Act XX. of* 1866, § 17—*Determination of Value—Consideration.*] In considering whether a mortgage is of the value of Rs. 100 or upwards, the value of "the right, title, or interest" created by the mortgage must be estimated by the amount of the principal money secured thereby, without any regard to the duration of the relation of mortgagor and mortgagee, or to the rate or continuance of the interest payable.

The words "or in future" which occur in § 17 of Act XX. of 1866 and of Act VIII. of 1871, have reference to estates in remainder or reversion in immoveable property, or to estates otherwise deferred in enjoyment, and not to interest payable in future on principle moneys lent on the security of immoveable property. *Darshan Singh* v. *Hanmanta* (I. L. Rep. 1 All. 274) dissented from. NANA LAKSHMAN *v.* ANANT BABAJI. *Westropp*, C.J., and *Melvill*, J.....**I. L. Rep. 2 Bom. 353, 1877.**

9.——*Act XX. of* 1866, § 17—*Partition Deed—Value.*] A deed of partition of immoveable property between Hindus, if it does not *create*, at least declares, an interest in immoveable property; and if the value of the property exceeds Rs. 100, registration of the deed is compulsory, under § 17 of Act XX. of 1866, notwithstanding that partition deeds are amongst those enumerated in § 18 which are optionally registrable. SHANKAR RAMCHANDRA *v.* VISHNU ANANT. *West* and *N. Harridas*, JJ .....**I. L. Rep. 1 Bom. 67, 1875.**

10. —— *Act XX. of* 1866, § 17—*Correspondence—Agreement to buy Future Interest in Land.*] A correspondence between *A.* and *B.* amounted to a contract for the purchase of a future interest in immoveable property:—

Held, that such correspondence did not require registration under Act XX. of 1866. PORT CANNING LAND, &c., CO. *v.* SMITH...**L. Rep. 1 I. A. 124 1874; L. Rep. 5 P. C. 114.**

11. —— *Act XX. of* 1877, § 17—*Madras Act VIII. of* 1665, § 3—Puttah—*Lease.*] A document professing to be a lease, but unregistered, was granted by a zemindar to the defendant's grandfather, its terms being—"In consideration of the assistance you have rendered this *Samastanam* (zemindary), you requested that the *Kasba* (chief) village of *Selugai* should be leased to you for forty years, fixing a favourable *poruppa*. The aforesaid *Selugai* village has been accordingly leased to you for forty years, fixing the *poruppa* at Rs. 400 *per annum*. You shall therefore raise the required crop and enjoy; and, agreeably to the *kararnama* (agreement) you have given, you shall continue to pay the fixed

Digitized by Google

REGISTRATION—*contd.*

poruppu, according to the instalments of *kist*, year after year." The value of the village was Rs. 1,700 a year.

Held, that this document was not a *puttah* within § 3 of Madras Act VIII. of 1865, and, not being excluded from the operation of § 17 of Act XX. of 1866, was inadmissible in evidence and did not affect the estate.

Section 3 of Madras Act VIII. of 1865 seems to be confined to the relation of tenants who are cultivating the land, and their immediate landlords. The whole Act may not be confined to that class, but the intention appears to be, by § 3 and the sections which specifically refer to it, to regulate the relation of landlords and tenants of that description, and not to embrace all cases of persons holding under others. It provides for what shall be done where there is an existing relation of landlord and tenant, and requires that the landlord shall in that case enter into a written engagement with his tenant. RAMASWAMI CHETTI *v.* THE COLLECTOR OF MADURA... **L. Rep. 6 I. A. 170, 1879; I. L. Rep. 2 Mad. 67.**

12. —— *Act VIII. of* 1871, § 17—*Acknowledgment of Receipt of Consideration.*] The defendant executed to the plaintiff an "agreement paper," bearing date the 28th April 1874, in the following terms:—"There is my tiled bungalow situated at East Street Lane. The agreement for the sale thereof to you by me for Rs. 4,300 was to have been made this day, but my creditor, Balkrishna Sapaya, has gone to Bombay. On his return, after about twenty days, I will make and deliver a deed of sale in accordance with what is written above. Should I not make and deliver the deed of sale within that time, or on the return of that person, I will make good whatever loss you may sustain. And Rs. 100, which you have now paid as earnest, will be considered as forfeited if you do not buy (it). You shall have no claim thereto, and the said Rs. 100 which you have paid I have received in ready cash in full."

In a suit in the nature of a suit for specific performance brought by the plaintiff to compel the defendant to execute and register a deed of sale in accordance with the terms of the above agreement:—

Held, that the agreement required registration under Act VIII. of 1871, § 17, Cl. 2 and 3, as it distinctly acknowledged the receipt of Rs. 100 as part of the consideration for the sale to the plaintiff of the house for the sum of Rs. 4,300, and operated to create an interest in the house of the value of Rs. 100 and upwards. VALAJI ISAJI *v.* THOMAS. *Westropp*, C.J, and *Melvill*, J... **I. L. Rep. 1 Bom. 190, 1876.**

13. —— *Act VIII. of* 1871, § 17—*Mortgage Receipt.*] A document purporting to have been passed by a mortgagee to his mortgagor, reciting the demand by the mortgagee of repayment of his mortgage debt before the due date of the mortgage; the compliance by the mortgagor with that demand, and his consequent re-mortgage to a third person in order to raise the money for that purpose; and the payment by such third person to the mortgagee, on account of the mortgagor, of the amount of the mortgage debt; and which stated that such second mortgage demanded possession of the original mortgage bond, and that the first mortgagee, on the direction of the mortgagor, had handed over the bond to the second mortgagee, and made over possession to him of the mortgaged property, and finally that there was nothing remaining due to the first mortgagee on the mortgage bond, is a document which under Cl. 2 and 3 of § 17 of Act XX. of 1866, as well as under Cl. 2 and 3 of § 17 of Act VIII. of 1871, requires registration, and if unregistered is, by § 49 of the same two Acts, inadmissible in evidence to show that the original mortgage lien on the land has been extinguished. But that fact may be proved by other documentary or proper oral evidence. MAHADAJI *v.* VYANKAJI GOVIND. *Westropp*, C.J., and *West* J...**I. L. Rep. 1 Bom. 197, 1876.**

14. ——*Act VIII. of* 1871, § 17—*Receipt—Release—Point not taken in Court below.*] *Held*, that the Court is bound, in regular appeal, to entertain an objection that a document is invalid for want of registration, even though no objection was taken to its admissibility in the Court below.

Held, also, that a document called a receipt, but intended and endeavoured to be used to prove the release of a claim secured by a mortgage, and not merely as a receipt for money paid, is, if unregistered, inadmissible in evidence for that purpose. BASAWA GURBASAWA *v.* KALAPA. *West* and *Pinhey*, JJ.....**I. L. Rep. 2 Bom. 489, 1871.**

Digitized by Google

REGISTRATION—*contd.*

15. —— *Act VIII. of* 1871, § 17—*Assignment of Decree for Sale of Mortgaged Property.*] Where a mortgagee obtained a decree for Rs. 1,600 against his mortgagor, to be realised by the sale of a house belonging to, and mortgaged by, the defendant, and his heir assigned this decree for Rs. 700, by an instrument in writing, to a purchaser, who proceeded to execute the decree :—

Held, that the assignment was an instrument the registration of which was compulsory. GOPAL NARRAIN *v.* TRIMBAK SADASHIV. *Westropp*, C.J., and *Kemball*, J...**I. L. Rep. 1 Bom. 267, 1876.**

16. ——*Act VIII. of* 1871, § 17—*Value of Right, Title or Interest—Consideration.*] When it is necessary to determine whether an instrument, other than a deed of gift, purports or operates to create, &c., any right, title, or interest of the value of Rs. 100 or upwards to or in immoveable property, the test of value to be adopted is the consideration stated in the instrument, whether it be one of sale or of mortgage, to be given to the grantor, and not either the minimum or maximum, or other benefit which may result from the transaction to the grantee, whether he be vendee or mortgagee.

The words "or in future," in § 17 of Act VIII. of 1871 and Act XX. of 1866, have reference to estates in remainder or reversion in immoveable property, or to estates otherwise deferred in enjoyment, and not to interest payable in future on principal money lent on the security of immoveable property. NANA LAKSHMAN *v.* ANANT BABAJI. *Westropp*, C.J., and *Melvill*, J.....**I. L. Rep. 2 Bom. 353, 1877.**

17. —— *Act VIII. of* 1871, § 17 — *Computation of Interest created in Immoveable Property.*] The words, in § 17 of the Registration Act (VIII. of 1871)," present or future," " vested or contingent," point not to *the value* or its ascertainment, but to the right or interest in the land which is to be created as a security. If the present charge or interest created is of a value less than Rs. 100, registration is needless, and for registration purposes a future contingent value is useless.

Therefore a bond by which, in consideration of Rs. 95, certain lands were mortgaged, the mortgagor agreeing to pay Rs. 60 worth of paddy and ragi, and Rs. 35 in cash, within a certain date, and in default to pay an increased quantity of grain, and interest on the cash at the rate of Rs. 2½ *per cent.* per month, was *held* not to require registration. NARASAYYA CHETTI *v.* GURUVAPPA CHETTI. *Morgan*, C.J., and *Kindersley*, J.....**I. L. Rep. 1 Mad. 378, 1878.**

18. —— *Act VIII. of* 1871, § 17—*Computation of Value of Interest created in Immoveable Property — Principal Sum — Interest.*] A deed purporting to secure the sum of Rs 95 advanced on certain property, giving the lender possession of the land for four years certain at a yearly rent of Rs. 8-12, Rs. 6-12 out of such rent to be held by the lessee in satisfaction of interest on the sum advanced, such possession to continue on the same terms until the money was paid, does not require registration.

Per Ainslie, J.—The words of the Act (VIII. of 1871), construed favourably to the validity of the instrument, show that the value of the property must be taken to be that which the parties themselves agreed on, and that, therefore, the interest passed under the deed ought to be valued for the purpose of determining the necessity of registration, at Rs. 95.

Per White, J.—" Looking to the natural sense of the language used in the Registration Act, I should say that the value of the interest in the present case is what the possession of the property rent-free for four years is worth to the lessee (defendant). The parties have fixed the amount of rent which will thus come into the defendant's pocket, under the instrument, at Rs. 6-12 per annum. The entire value thereof of four years' possession would be Rs. 27, and the document, therefore, would not require registration. The contingent circumstance that the defendant may continue to hold for more than four years, ought not to be taken into account in determining the value of the interest for the purpose of registration. I feel some difficulty in treating the Rs. 95 as the value of the interest in the lands." RAM DOOLARY KOOER *v.* THACOOR ROY...**I. L. Rep. 4 Cal. 61; 2 Cal. Rep. 547, 1878.**

19. —— *Act VIII. of* 1871, § 17—*Computation of Value of Interest created in Immoveable Property.*] The value of the interest created by a mortgage of immoveable property is estimated, for the purposes of the Registration Act VIII. of 1871, not by the amount of the principal money, thereby secured, but by the amount of such money, and the interest payable thereon.

Digitized by Google

REGISTRATION—*contd.*

Consequently, a bond, dated 9th August 1873, which charged certain immoveable property with the payment on the 31st May 1874 of Rs. 98, and interest thereon at the rate of 1 per cent. per mensem, *held* to require registration. *Durshan Singh* v. *Anmanta* (I. L. Rep. 1 All. 274) followed. *Nana Lakshman v. Anant Babaji* (I. L. Rep. 2 Bom. 353) dissented from. RAJPATI SINGH v. RAM LUKHI KUAR. *Pearson* and *Oldfield*, JJ. **I. L. Rep. 2 All. 40, 1878.**

20. —— *Act VIII. of* 1871, § 17—*Mortgage—Compulsory and Optional Registration—Interest—Priority.*] In 1871 certain persons gave the plaintiff a bond for the repayment of Rs. 75, which charged certain lands with such payment. The bond did not need to be, and was not registered. In 1874 the obligors gave the defendant a bond for the repayment of Rs. 99, by which they agreed to pay the principal amount within six months from the date of the execution of the bond, and to pay interest on the principal every month at the rate of two per cent., and that if they failed to pay such interest in any month, the obligee should be at liberty to sue to recover "the entire amount mentioned in the bond," and they charged the same land with the payment of "the amount mentioned in the bond." In 1874 the defendant obtained a decree on his bond, declaring his lien on the land; and in 1876 the plaintiff obtained a similar decree on his bond. In 1876 the land was attached in execution of the defendant's decree, and in 1877 in execution of the plaintiff's decree. The plaintiff became the auction purchaser of the land at the sale held in execution of these decrees. The Court executing the decrees directed the sale proceeds to be paid to the defendant as the first attaching creditor. In a suit brought by the plaintiff to recover the money so paid:—

Held, that there being in the bond executed to the defendant no stipulation preventing the debtor from repaying the loan at any time within the six months after which it became reclaimable, it could not be said that any portion of the interest accruing on the principal was secured for certain, in the sense that it could be definitively calculated and taken into account at the date of the execution of the bond; and, the principal amount secured being less than Rs. 100, the bond did not require registration; but, having been registered, was entitled to take effect against the plaintiff's unregistered bond.

REGISTRATION—*contd.*

Held also, that the property having been first attached by the defendant, he was, for that reason, as well as because his bond was registered, entitled to preference over the plaintiff. AHMAD BUKSH v. GOBINDI. *Pearson* and *Spankie*, JJ..... **I. L. Rep. 2 All. 216, 1879.**

21. —— *Act VIII. of* 1871, § 17—*Mortgage—Computation of Value of Interest created in Immoveable Property.*] A bond dated 21st of March 1871 charged immoveable property with the payment on the 5th of June 1871 of Rs. 99, with interest thereon at 2 per cent. per mensem:—

Held, to require registration as creating an interest in immoveable property over Rs. 100 in value, inasmuch as it secured the repayment of Rs. 99 *plus* Rs. 6, the interest for three months. DARSHAN SINGH v. HANMANTA. *Stuart*, C.J., and *Turner*, J.... **I. L. Rep. 1 All. 274, 1876.**

22. —— *Act VIII. of* 1871, § 17—*Receipt for Sum paid in Part of Mortgage Debt—Parol Evidence of Payment.*] A receipt for a sum paid in part liquidation of a bond hypothecating immoveable property must, under the provisions of § 17 of Act VIII. of 1871, be registered, so as to render it admissible as evidence of the payment. But, under illustration (*e*), § 91 of Act I. of 1872, such payment may be proved by parol evidence, which is not excluded by reason of the inadmissibility of the receipt. DALIP SINGH v. DURGA PRASAD. *Pearson* and *Turner*, JJ..... **I. L. Rep. 1 All. 442, 1877.**

23. —— *Act VIII. of* 1871, § 35—*Effect of Certificate.*] A deed of sale purporting to be executed by a Mahomedan woman and her two sons was presented for registration. The sons appeared, and admitted their own execution, but denied that of their mother, and objected to the registration of the deed. The Registrar, notwithstanding this objection, registered the deed. The High Court held that, the execution of the deed not having been admitted by the mother, and her authority for its execution having been denied, it was improperly registered, having regard to § 35 of Act VIII. of 1871, and could not be received in evidence as against the sons:—

Held, that though the words in § 35 "if all or any of the persons by whom the document purports to be executed deny its execution, or if any such person appears to be a minor, an idiot, or a lunatic, or if any person by whom the

Digitized by Google

REGISTRATION—*contd.*

document purports to be executed is dead, and his representative or assign denies the execution, the registering officer shall refuse to register the document," taken literally, seem to require the registering officer to refuse to register a deed which purports to be executed by several persons if any one of them deny the execution; yet such a construction would cause great difficulty and injustice, which it could not be supposed the Legislature contemplated, and would be inconsistent with the language and tenor of the rest of the Act; the words, therefore, should be read distributively, and be construed to mean that the registering officer shall refuse to register a document *quoad* the persons who deny the execution of the deed, and *quoad* any person who appears to be a minor, an idiot, or a lunatic; and that there was no reason for extending the clause further than this, so as to destroy the operation of the deed as regards those who admit the execution, and who are under no disability, which would be the practical effect of a refusal to register at all.

The proposition laid down by the High Court, "that unless a deed be registered in accordance with the substantial provisions of the law, it must be regarded as unregistered, though it may, in fact, have been improperly admitted to registration," was too broadly stated, if the High Court be understood to mean that in all cases where a registered deed is produced, it is open to the party objecting to the deed, to contend that there was an improper registration, that the terms of the Registration Act in some substantial respect have not been complied with. The certificate of registration provided for by § 60 is that which gives the document the character of a registered document, and the Act expressly says that that certificate shall be sufficient to allow of its admissibility in evidence, without inquiry whether the same was properly granted. *Sah Mukhun Lall Panday* v. *Sah Koondun. Lall* (L. Rep. 2 I. A. 210) approved. MAHOMED EWAZ v. BIRJ LALL.....**L. Rep. 4 I. A. 166; I. L. Rep. 1 All. 465, 1877.**

24. —— *Act VIII. of* 1871, § 49—*Evidence—Inadmissibility of Unregistered Document in Suit for Money.*] *M. D.* sued *R. S.* in the Small Cause Court to recover Rs. 203 due on the following document:—"I, *R. S.*, do write this land-mortgage deed to the effect as follows:—That I now possess by right of purchase five annas, six and a half *gundas* of land, and, having need of money, I borrow the sum of Rs. 100 from you on mortgage thereof, with interest at the rate of Rs. 24 per cent. per annum, which interest I shall pay monthly. In default of paying interest monthly, I shall have to pay compound interest at the rate of one anna for interest money, and shall repay the whole amount within the 23rd day of Chaitro of the year. In default of my paying the debt within the term aforesaid, you shall have to get the mortgaged property sold, by instituting legal proceedings. Should the sale thereof not cover the whole amount, you shall have to realize the balance by having my other landed properties disposed of. On the above conditions I do hereby execute this mortgage deed, having mortgaged the above piece of land together with the title-deeds thereof."

The deed, being unregistered, was held inadmissible in evidence. On a reference to the High Court:—*Held*, that the unregistered document being in its terms indivisible, and disclosing one transaction only which it would be necessary for the plaintiff to prove for the purpose of making out his case, was under § 49 of Act VIII. of 1871, inadmissible in evidence for the purpose of proving a fact for which registration was unnecessary. MATTONGENEY DOSSEE *v.* RAMNARRAIN SADKHAN. *Garth*, C.J., and *Markby*, J.....**I. L. Rep. 4 Cal. 83; 2 Cal. Rep. 428, 1878.**

25. —— *Act VIII. of* 1871, § 50—*Priority—Optional and Compulsory Registration.*] A document creating an interest in immoveable property, the registration of which under Act VIII. of 1871 is compulsory, and which is registered under that Act, does not, under § 50 of that Act, take effect as regards such property against an unregistered document relating to such land, the registration of which, under Act VIII. of 1871, was optional. BHOLA NATH *v.* BALDEO. *Spankie* and *Oldfield*, JJ...**I. L. Rep. 2 All. 198, 1879.**

S. C. under **Registration. 29.**

26. —— *Act VIII. of* 1871, § 50—*Priority of Registered over Unregistered Document—Act I. of* 1868, § 6.] Section 50 of Act VIII. of 1871 must be very strictly construed against any derogation of right. It does not give priority to a registered deed of sale, the registration of which is compulsory, over a prior unregistered deed of sale of the same property, the registration

Digitized by Google

REGISTRATION—*contd.*

of which was optional. By § 6 of the General Clauses Act I. of 1868, a suit is to be governed by the Registration Law in force at the institution of the suit, and not by that which may be in force when it comes on for hearing. OOGHRA SINGH *v.* ABLAKHI KOOER. *Mitter* and *Maclean*, JJ....**I. L. Rep. 4 Cal. 536; 3 Cal. Rep. 435, 1878.**

27. —— *Act VIII. of* 1871, § 73—*Refusal to Register—Person "claiming" under Document.*] A deed of sale, executed by the vendor alone, which recited that the vendor had received the purchase-money, and that the purchaser had been put into possession, was presented for registration by the vendor, the purchaser not being present. The Registrar refused to register the document, on the ground that the deed had not been delivered, and no consideration had passed, the vendor having stated that he had not received the purchase-money. In refusing to register, the Registrar believed that the deed was of the vendor's own creation. The vendor applied by petition to the High Court to establish his right to have the document registered. The alleged purchaser repudiated the sale.

Held, by *Pearson*, *Turner*, and *Spankie*, JJ.—That inasmuch as the deed was executed by the vendor alone, no claim could be founded on it by him against any one, and he was not, therefore, as a person claiming under the document, entitled to apply by petition under § 73 of Act VIII. of 1871, to compel the registration of the deed of sale.

Held, by *Stuart*, C.J.—That the mere fact that the deed of sale was unilateral did not of itself prevent the vendor from being a person claiming under it, and therefore entitled to apply by petition under that section. But on the merits the registration should not be ordered. The deed having been repudiated by the alleged purchaser, the case came within the scope and intention of § 35 of Act VIII. of 1871, which provides that if all or any of the persons by whom the document purports to be executed deny its execution, the registration shall be refused.

Held, by *Oldfield*, J.—That it was the duty of the Court to order the registration of the deed, as it was duly executed, and the requirements of the law fulfilled, without entering into the question whether or not the petitioner could

REGISTRATION—*contd.*

claim under it. *In the matter of the Petition of* BISH NATH.....**I. L. Rep. 1 All. 318, 1876, F.B.**

28. —— *Act III. of* 1877, § 17, *Evidence—Covenant—Patent Ambiguity—Estoppel—Cause of Action—Damages—Consideration—Limitation.*] *S. L.*, by a deed of gift dated 16th February 1847, granted and assured to his daughter, *S.*, certain immoveable property in Bombay. By a subsequent deed of gift of 15th July 1865, purporting to have been executed in consideration of natural love and affection, he affected to grant and convey the same property, the value of which exceeded Rs. 100, to *B. R.*, the husband of *S.*, his heirs, executors, administrators, and assigns. This deed, which was never registered, contained covenants for title by *S. L.*, for himself, his heirs, executors, and administrators, to *B. R.*, his heirs, executors, administrators, and assigns, to "the hereditaments and premises hereinbefore expressed to be hereby granted and assured unto and to the use of the said *B. R.*, his heirs, executors, administrators, and assigns."

S. died in the lifetime of her husband, *B. R.*, who died in 1863, after having, in 1867 and 1868, executed deeds of mortgage of the premises comprised in the two deeds of 16th February 1847 and 15th July 1865, to *S. N.*, who in 1870, under the powers of sale contained in the mortgage deeds, sold the mortgaged property by auction in 1870 to the plaintiff. On 24th March 1871, *S. N.* executed to the plaintiff a conveyance of the premises, which were then in the possession of the representatives of *B. R.* and his wife *S.* The plaintiff having failed in a suit in ejectment against the parties in possession, who relied upon the prior deed of gift to *S.*, brought the present suit against the representatives of *S. L.*, for damages for breach of the covenants for title contained in the unregistered deed of gift of the 15th July 1865.

Held, *1st*, that the provisions of Act III. of 1877 apply to all documents tendered in evidence on or after 1st April 1877.

Held, *2ndly*, that the deed of 15th July 1865 was one of which, under § 17 of Act III. of 1877, the registration was compulsory; and that, assuming that as in *Tukaram* v. *Khandoji* (6 Bom. H. C. Rep., O. C. J. 134) and *Sangappa* v. *Basappa* (7 Bom. H. C. Rep., A. C. J. 1), the deed was admissible as evidence of a covenant for the breach of which damages were sought, yet the

Digitized by Google

REGISTRATION—*contd.*

deed must be treated as non-existent, or rather as not in evidence, so far as it purported to affect the immoveable property comprised therein, or to afford evidence of any transaction affecting such property; and that the only parts of the deed that could be looked to, were the description of the parties, the covenant for title, and the *testatum*. But, so doing, and excluding that part of the deed which purported to be the conveyance to *B. R.*, the covenant for title sued on was patently ambiguous and uncertain as to its subject-matter, and there being nothing to connect the hereditaments and premises, to which the covenant related, with those conveyed to the plaintiff by the deed of 24th March 1871, or with those as to which the breach of covenant was alleged not only was no breach of covenant proved, but the covenant sued upon was in itself ambiguous and uncertain.

3rdly, that a covenant for title running with the land would seem in itself to be a transaction affecting the land, and that the instrument containing it, if coming within clause (*a*), (*b*), (*c*), or (*d*), of § 17, must be registered before it is admissible in evidence for the purpose of proving the existence of such covenant, unless it comes within the exceptive clauses (*e*) to (*l*), and in particular within clause (*h*).

4thly, that as in a suit for specific performance of an agreement for the sale of land, the agreement may be admitted in evidence, though unregistered, if it does not of itself create, declare, &c., any right, title, or interest of the value of Rs. 100 and upwards to or in immoveable property by the acknowledgement of the receipt of any consideration on account of the creation, declaration, &c., of a right, title, or interest in land, so a document containing covenants for title—though, no doubt, embodying "a transaction affecting immoveable property"—is admissible in evidence in a suit for damages for breach of such covenants, provided always that the document containing such covenants is conformable to the requirements of the exceptive cl. (*h*) of § 17 of the Act. But when, as in the present case, the evidence of the covenant is contained in a document *itself* purporting to assign an interest in immoveable property, and when the effect of the covenant itself cannot be got at without looking at the portion of the document which contains the assignment, the document is not excepted by cl. (*h*) of § 17 from the necessity of registration,

REGISTRATION—*contd.*

and therefore that the deed of 15th July 1865 (which had been admitted in evidence by the Court) ought not to have been received in evidence, even for the purpose solely of proving the covenant for title.

5thly, that the Court being precluded, by the operation of Act III. of 1877, from looking at the deed of 15th July 1865, so far as it was a conveyance, the defendants were not estopped from showing that inasmuch as *B. R.* took nothing under it in consequence of the prior deed of gift to *S.*, so the plaintiff claiming under him had taken nothing, and was not, therefore, *B. R.*'s assign of anything, nor, in the alleged character of assign, entitled to maintain the suit.

6thly, according to English law, damages may be recovered for breach of covenants for title contained in a voluntary settlement, though the settlement may not be of such a character as to be effectual without the assistance of a Court of Equity, and which assistance the Court of Equity will refuse to a volunteer. But this depends on the principle of English law, that the fact of the solemnity of sealing and delivering a document is regarded at law as importing consideration; and this principle does not hold as between Hindus. The fact, therefore, that the indenture of the 15th July 1865 was sealed and delivered was immaterial, and the defendants were at liberty to show that the plaintiff was suing on a contract for which there was no consideration other than natural love and affection, which could not be made the ground of a suit for damages.

7thly, that the breach of the covenant sued on, so far as it related to the covenantor's present power to convey, took place on the day the deed was executed, *i.e.*, 15th July 1865, and therefore the suit in respect of such breach was barred; that the covenant for quiet enjoyment admitting of a continuous breach, the suit in respect of a breach thereof would not be barred if otherwise maintainable; and that the covenant for further assurance had never been broken at all. RAJU BALU *v.* KRISHNARAV RAMCHANDRA. *Green*, J...**I. L. Rep. 2 Bom. 273, 1877.**

29. —— *Act III. of* 1877, § 50—*Document executed after 1st July* 1871, *and before Act III. of* 1877.] *Held*, that the provisions of § 50 of Act III. of 1877 did not apply to documents

Digitized by Google

REGISTRATION—*contd.*

executed after the 1st of July 1871, and before Act III. of 1877 came into force.

The unregistered document in § 50 of Act III. of 1877 means one not registered under Act VIII. of 1871, or that Act, though executed after the 1st July. But still the Act introduces for the first time clauses both of § 17 and § 18, by which introduction all registered documents take effect henceforth as against unregistered documents of which under the Act registration is optional, subject to the explanation in the section; whereas § 50 of Act VIII. of 1871 gives a preference to registered documents of the kind mentioned in Cl. (*a*) and (*b*) of § 18 over the unregistered document, subject to the explanation added to the section: so that by Act VIII. of 1871 it is only the duly registered documents (though their registration is only optional) which take effect against the unregistered documents. BHOLA NATH *v.* BALDEO. *Spankie* and *Oldfield*, JJ...**I. L. Rep. 2 All. 198, 1879.**

S. C. under **Registration. 25.**

30. —— *Act III. of* 1877, § 50—*Act VIII. of* 1871, § 50 — *Priority.*] *Held*, that, under § 50 of Act III. of 1877, a document of which the registration was compulsory under that Act, and which was registered thereunder, took effect as regards the property comprised in the document, as against another document of a prior date, relating to the same property, executed while Act VIII. of 1871 was in force, and which did not require, under that Act, to be registered, and which was not registered under it. GANGA RAM *v.* BANSI. *Stuart*, C.J., and *Spankie*, J...**I. L. Rep. 2 All. 431, 1879.**

31. —— *Suit to Enforce Registration—Contract of Sale—Act III. of* 1877, §§ 36, 75, 77.] *Held*, where a person had agreed to sell to another certain immoveable property and had conveyed the same to him by a deed of sale which under the Registration Act III. of 1877 required registration, and the vendor refused to register such deed, that it was not incumbent on the vendee to take steps under that Act to compel the vendor to register before he sought relief in the Civil Court, but that he was at liberty, without doing so, to sue the vendor in the Civil Court to compel registration of the deed. RAM GHULAM *v.* CHOTAY LAL. *Stuart*, C.J., and *Oldfield*, J....**I. L. Rep. 2 All. 46, 1878.**

REGISTRATION—*contd.*

32. —— *Priority between Deed registered under Act XX. of* 1866, *and Deed which might have been but was not registered under Act XIX. of* 1843.] Act XX. of 1866 makes no provision for priority of deeds of sale or mortgage registered under that Act over deeds of sale or mortgage which might have been, but were not registered under Act XIX. of 1843, where the consideration for the rival deeds exceed Rs. 100. KHANDAS DULABDAS *v.* TARACHAND AMARCHAND *Westropp*, C. J....**I. L. Rep. 1 Bom. 574, 1877.**

REGISTRATION ACT XIX. OF 1843.

See **Registration. 32.**

KHANDAS *v.* TARACHAND...**I. L. Rep. 1 Bom. 574.**

REGISTRATION ACT XX. of 1866.

—— § 17.

See **Registration. 7 to 11.**

—— § 36.

See **Registration. 31.**

RAM GHULAM *v.* CHOTAY LAL...**I. L. Rep. 2 All. 46.**

—— § 50.

See **Registration. 29. 30.**

—— § 75.

See **Registration. 31.**

RAM GHULAM *v* CHOTAY LAL...**I. L. Rep. 2 All. 46.**

—— § 36—Absence of Vendor—Defect in Procedure.

See **Registration. 2.**

SAH MUKHUN LALL *v.* SAH KOONDUN...**L. Rep. 2 I. A. 210.**

—— § 49—"Registered in accordance with the provisions of this Act"—Absence of Vendor—Registration in.

See **Registration. 2.**

SAH MUKHUN LALL *v.* SAH KOONDUN LALL...**L. Rep. 2 I. A. 210.**

—— § 52—Appeal from Orders in Execution of Decrees under.

See **Appeal Civil. 7. 11. 12.**

BHYRUB CHUNDER *v.* GOLAP COOMARY.....**I. L. Rep. 3 Cal. 517.**

RAMANAND *v.* BANK OF BENGAL...**I. L. Rep. 1 All. 377.**

WILAYAT-UN-NISSA *v.* NAJIB-UN-NISSA .... **Ibid. 583.**

Digitized by Google

REGISTRATION ACT XX. OF 1866—*contd.*

—— § 53—Simple Mortgage Bond Specially Registered, Money Decree obtained on—Subsequent Suit to enforce Mortgage Lien on Mortgaged Property.

See **Res Judicata. 22.**

DOSS MONEY *v.* JONMENJOY MULLICK...**I. L. Rep. 3 Cal. 363.**

—— §§ 52 and 53—Limitation for Execution of Decree on Specially Registered Bond.

See **Limitation. 79.**

JAI SHANKAR *v.* TETLEY.....**I. L. Rep. 1 All. 586.**

—— § 53 — Decree on Specially Registered Mortgage Bond.

See **Sale in Execution of Decree. 5.**

AKHE RAM *v.* NAND KISHORE... **I. L. Rep. 1 All. 236.**

—— § 88—Defect in Procedure—Registration in absence of Vendor.

See **Registration. 2.**

SAH MUKHUN LALL *v.* SAH KOONDUN LALL...**L. Rep. 2 I. A. 210.**

REGISTRATION ACT VIII. OF 1871—District Courts.

See **Review. 8.**

REASUT HOSSEIN *v.* HADJEE ABDOOLAH.....**L. Rep. 3 I. A. 221.**

—— § 3—Lease—Undertaking to cultivate or occupy.

See **Lease.**

APA BUDGAVDA *v.* NARHARI ANNAJEE...**I. L. Rep. 3 Bom. 21.**

—— § 17.

See **Assignment of Mortgage.**

GANPAT PANDURANG *v.* ADARJI DADABHAI.....**I. L. Rep. 3 Bom. 312.**

And *see* **Registration,** 12 to 22.

—— § 17, Cl. 2—Bond for Rs. 82 payable on Demand with Interest.

See **Registration. 1.**

KARAN SINGH *v.* RAM LAL.. **I. L. Rep. 2 All. 96.**

—— § 35—Certificate, Effect of.

See **Registration. 23.**

MAHOMED EWAZ *v.* BRIJ LAL...**L. Rep. 4 I. A. 166.**

REGISTRATION ACT VIII. OF 1871—*contd.*

—— § 49—Evidence—Unregistered Document.

See **Registration. 24.**

MATTONGENEY *v.* RAMNARAIN...**I. L. Rep. 4 Cal. 83.**

—— § 50—Registered and Unregistered Documents of which Registration Optional—Priority.

See **Registration. 20. 25. 26.**

—— § 73—Refusal to Order Registration—Review.

See **Review. 8.**

REASUT HOSSEIN *v.* HADJEE ABDOOLLAH...**L. Rep. 3 I. A. 221.**

—— Refusal to Register—Person 'claiming' under Document.

See **Registration. 27.**

—— § 76—Refusal to Register—Appeal.

See **Appeal—Civil. 10.**

SYUD MAHOMET *v.* HADZI ABDULLAH...**I. L. Rep. 3 Cal. 727.**

REGISTRATION ACT III. OF 1877.

See **Appeal—Civil. 10.**

SYUD MAHOMET *v.* HADZI ABDULLAH ..**I. L. Rep. 3 Cal. 727.**

—— § 3 — Immoveable Property — Standing Crops—Limitation.

See **Standing Crops.**

PANDAH GAZI *v.* JENNUDI...**I. L. Rep. 4 Cal. 665.**

—— § 17.

See **Registration. 28.**

—— § 77.

See **Registration. 31.**

RAM GHULAM *v.* CHOTAY LAL... **I. L. Rep. 2 All. 46.**

RE-GRANT OF CONFISCATED ESTATE, EFFECT OF.

See **Confiscation in Oudh. 1.**

NAWAB MULKA JAHAN SAHIBA *v.* DEPUTY COMMISSIONER OF OUDH.....**L. Rep. 6 I. A. 63.**

Digitized by Google

RE-GRANT BY GOVERNMENT—Effect of.

See **Compromise. 2.**

PITAM SINGH *v.* UJAGAR SINGH... **I. L. Rep. 1 All. 651.**

REGULATIONS.

See **Bengal Regulations.**
See **Bombay Regulations.**
See **Madras Regulations.**

RE-HEARING OF APPEAL BEFORE PRIVY COUNCIL, HEARD EX-PARTE.

See **Practice—Privy Council. 4.**

MAHARAJAH PERTAB *v.* MAHARANEE SUBHAO KOER...**L. Rep. 5 I. A. 171 ; S. C. I. L. Rep. 4 Cal. 184.**

RE-HEARING OF EX-PARTE DECREE GRANTED AFTER EXPIRATION OF TIME LIMITED BY LAW.

See **Civil Procedure Code, Act VIII. of 1859, § 119. 2.**

RUNGLALL MISSER *v.* TOKHUN MISSER....**I. L. Rep. 2 Cal. 114.**

RELATIVE POSITION OF MAGISTRATE OF THE FIRST CLASS TO DISTRICT MAGISTRATE AND SESSIONS COURT.

See **Sanction to Prosecute. 5. 6.**

IMPX. *v.* PADAMABHA PAI...**I. L. Rep. 2 Bom. 384.**

GUR DAYAL...**I. L. Rep. 2 All. 205.**

RELATIVE POSITION OF SUBORDINATE JUDGE, DISTRICT JUDGE, AND HIGH COURT—For purpose of Sanction to Prosecute—Act X. of 1872, § 468.

See **Sanction to Prosecute. 4.**

IMPX. *v.* LAKSHMAN...**I. L. Rep. 2 Bom. 481.**

RELEASE—Composition Deed — Misrepresentation—Contract Act IX. of 1872, §§ 18, 19—Cancelling Deed.

See **Cancellation of Signature.**

THE ORIENTAL BANK CORPORATION *v.* JOHN FLEMING ..**I. L. Rep. 3 Bom. 242.**

RELEASE—*contd.*

—— To One of Several Partners.

See **Contract. 10.**

KIRTEE CHUNDER *v.* STRUTHERS... **I. L. Rep. 4 Cal. 336.**

RELIEF GRANTED BY DECREE—Specific Statement of.

See **Decree. 1.**

KANGAL CHANDR *v.* KANYE LALL. **I. L. Rep. 4 Cal. 69.**

RELIGIOUS BROTHERHOOD ATTACHED TO HINDU TEMPLE, CONSTITUTION AND RULES OF.

See **Mohunt. 1.**

RAJAH MUTTU RAMALINGA SETUPATI *v.* PERIANAYAGUM PILLAI. **L. Rep. 1 I. A. 209.**

RELIGIOUS ENDOWMENT—Suit for Management of.

See **Suit for Management of a Religious Endowment.**

PANCHCOWRIE MULL *v.* CHUMROOLALL ..**I. L. Rep. 3 Cal. 563.**

RELIGIOUS SERVICES PERFORMED—Suit for Dues for.

See **Dues for Religious Services performed.**

TIRU KRISHNAMA *v.* KRISHNA SWAMI...**L. Rep. 6 I. A. 140; I. L. Rep. 2 Mad. 62.**

RELINQUISHING OR OMITTING TO SUE FOR PORTION OF CLAIM.

See **Civil Procedure Code, Act VIII. of 1859, § 7. 2.**

LACHMAN SINGH *v.* SANWAL SINGH. **I. L. Rep. 1 All. 543.**

—— Simultaneous Suits.

See **Civil Procedure Code, Act VIII. of 1859, § 7. 4. 5.**

KALESHAR PRASAD *v.* JAGAN NATH. **I. L. Rep. 1 All. 650.**

RAM TARRUN *v.* HOSSEIN BUKSH... **I. L Rep. 3 Cal. 785.**

RELINQUISHMENT OF SHARE BY SON.

See **Hindu Law—Relinquishment of Share by Son.**

BALKRISHNA *v.* SAVITRIBAI ..**I. L. Rep. 3 Bom. 51.**

Digitized by Google

REMAND—No Appeal to Privy Council from Order of.

See **Appeal to the Privy Council. 5.**

TETLEY *v.* JAI SHANKAR.....**I. L. Rep. 1 All. 726.**

—— By District Magistrate of Case triable by Magistrate, after Discharge by Subordinate Magistrate.

See **Criminal Procedure Code, Act X. of 1872, § 295. 1.**

DIJAHUR DUTT.....**I. L. Rep. 4 Cal. 647.**

And *see* the Cases under **Revival of Prosecution.**

—— Objections after Time fixed in Order of Remand

See **Civil Procedure Code, Act VIII. of 1859, § 354.**

RATAN SINGH *v.* WAZIR.....**I. L. Rep. 1 All. 165.**

—— Plea of Limitation cannot be taken for First Time on — Special Appeal from Decree on Remand on Special Appeal.

See **Limitation. 3.**

MORU *v.* GOPAL.....**I. L. Rep. 2 Bom. 120.**

REMARRIAGE OF WIDOW.

See **Hindu Law—Remarriage of Widow.**

MURUGAYI *v.* VIRAMAKALI...**I. L. Rep. 1 Mad. 226.**

REMISSION OF AWARD—Not Illegal on its face.

See **Arbitration. 3.**

NANAK CHAND *v.* RAM NARRAYAN. **I. L. Rep. 2 All. 181.**

REMISSION OF REVENUE FOR TERM OF YEARS DOES NOT ALTER NATURE OF REVENUE-PAYING LANDS.

See **Sale in Execution of Decree. 8.**

SHOWERS *v.* SETH GOBIND DASS... **I. L. Rep. 1 All. 400.**

REMOTENESS.

See **Hindu Law—Will. 4. 7.**

KHERODEMONEY *v.* DOORGAMONEY. **I. L. Rep. 4 Cal. 455.**

SOUDAMONEY *v.* JOGESH CHUNDER. **I. L. Rep. 2 Cal. 262.**

REMOVAL OF KARANAVAN FROM OFFICE.

See **Malabar Law. 2.**

ERAVANNI *v.* ITTAPU...**I. L. Rep. 1 Mad. 153.**

RENT—Arrangement for Separate Payment of.

See **Co-Sharers of Land. 1.**

GUNI MAHOMED *v.* MORAN...**I. L. Rep. 4 Cal. 96.**

—— Arrears of—*Bhaoli*—Ejectment.

See **Beng. Act VIII. of 1869, §§ 21 and 52.**

KISHENGOPAULMAWAR *v.* BARNES. **I. L. Rep. 2 Cal. 374.**

—— Arrears of *Bhaoli* or Grain—Suit for Money Equivalent of.

See **Act XVIII. of 1873, § 93. 1.**

TAJUDDIN KHAN *v.* RAM PARSHAD BHAGAT...**I. L. Rep. 1 All. 217.**

—— Arrears of Enhanced—Interest on.

See **Interest. 8.**

KHAJAH ASHANOOLLAH *v.* KAJEE AFTABOODDEEN...**I. L. Rep. 4 Cal. 594.**

—— *Bhaoli*—Arrears—Suit for Money Equivalent.

See **Act XVIII. of 1873, § 93. 1.**

TAJUDDIN KHAN *v.* RAM PARSHAD BHAGAT...**I. L. Rep. 1 All. 217.**

—— *Bhaoli*—Ejectment for Arrears of.

See **Beng. Act VIII. of 1869, §§ 21 and 52.**

KISHENGOPAULMAWAR *v.* BARNES. **I. L. Rep. 2 Cal. 374.**

—— *Bhaoli*—Enhancement.

See **Enhancement of Rent. 4.**

HANUMAN PARSHAD *v.* KAULESSAR PANDAY...**I. L. Rep. 1 All. 301.**

—— Of Dependent Talook—Enhancement.

See **Enhancement of Rent. 2.**

HURRONATH ROY *v.* GOBIND C. DUTT...**L. Rep. 2 I. A. 193.**

—— Enhancement of *Ghatwal's*.

See **Ghatwali Tenure.**

LEELANUND SINGH BAHADUR *v.* THAKOOR MUNRUNJUN SINGH. **I. L. Rep. 3 Cal. 251.**

Digitized by Google

RENT—*contd.*

—— Enhancement of—by *Ijaradar*.

See **Enhancement of Rent. 7.**

DOORGA PRASHAD *v.* JOYNARAIN. **I. L. Rep. 2 Cal. 474.**

—— Enhancement of—by *Inamdar*—Right of.

See **Enhancement of Rent. 5.**

PURSOTAM KESHAVDAS *v.* KALYAN RAYJI...**I. L. Rep. 3 Bom. 348.**

See **Inamdar.**

PRATAPRAV *v.* BAYAJI...**I. L. Rep. 3 Bom. 141.**

See **Miras. 2.**

VISHNUBHAT *v.* BABAJI...**I. L. Rep. 3 Bom. 345, n.**

—— Enhancement of—Notice of—by One of Several Joint Landlords.

See **Co-Sharers of Land. 1. 9.**

GUNI MAHOMED *v.* MORAN...**I. L. Rep. 4 Cal. 96.**

BALAJI *v.* GOPAL...**I. L. Rep. 3 Bom. 23.**

—— Enhancement of—Notice of—When Unnecessary.

See **Beng. Act VIII. of 1869, § 14. 2.**

NISTARNI *v.* BONOMALI...**I. L. Rep. 4 Cal. 941.**

—— Enhancement of—by Purchaser at Revenue Sale.

See **Enhancement of Rent. 1.**

PURMANAND *v.* ROOKINEE...**I. L. Rep. 4 Cal. 793.**

See **Beng. Reg. XLV. of 1793, § 5.**

MOHINY M. ROY *v.* ICHAMOYEE. **I. L. Rep. 4 Cal. 612.**

—— Enhancement of—of Tenure held by Joint Hindu Family—Service of Notice.

See **Beng. Act VIII. of 1869, § 14. 1.**

NOBODEEP *v.* SONARAM...**I. L. Rep. 4 Cal. 592.**

—— Fixed—Right of *Mirasdar* to hold on.

See **Miras. 1. 2.**

BABAJI *v.* NARAYAN...**I. L. Rep. 3 Bom. 340.**

VISHNUBHAT *v.* BABAJI .....**Ibid. 345, n.**

See **Enhancement of Rent. 5.**

PARSOTAM KESHAVDAS *v.* KALYAN RAYJI.....**I. L. Rep. 3 Bom. 348.**

RENT—*contd.*

—— Grain—Arrears—Suit for Money Equivalent.

See **Act XVIII. of 1873, § 93. 1.**

TAJUDDIN KHAN *v.* RAM PARSHAD BHAGAT...**I. L. Rep. 1 All. 217.**

—— Limitation to Suit for Arrears of.

See **Bengal Act VIII. of 1869, § 31.**

RAM SUNKER SENAPATTY *v.* BIR CHUNDER MANIKYA.....**I. L. Rep. 4 Cal. 714.**

See **Limitation. 4. 9. 10. 12.**

WATSON & Co. *v.* DHONENDRA C. MOOKERJEE.....**I. L. Rep. 3 Cal. 6.**

BROJENDRO C. ROY *v.* RAKHAL C. ROY .....**Ibid. 791.**

HURRO P. ROY *v.* GOPAL-DASS DUTT.....**Ibid. 817.**

PURRAN CHUNDER *v.* MUTTY LALL. **I. L. Rep. 4 Cal. 50.**

—— Non-Payment of—by Occupancy Ryot for more than Twelve Years—Admission of Liability by Tenant—No Title.

See **Limitation. 21.**

PORESH NARIAN *v.* KASSI CHUNDER. **I. L. Rep. 4 Cal. 661.**

—— Non-Payment of—not Proof of Cessation of Relation of Landlord and Tenant once shown to have existed.

See **Landlord and Tenant. 5. 9.**

RUNGO LALL *v.* ABDOOL GUFFOOR. **I. L. Rep. 4 Cal. 314.**

PREM SUKH DAS *v.* BHUPIA...**I. L. Rep. 2 All. 517.**

—— Non-Payment of—on account of Submerged Lands—Extinguishment of Right of Occupancy on their Re-formation.

See **Extinguishment of Right of Occupancy.**

HEMNATH DUTT *v.* ASHGUR SINDAR **I. L. Rep. 4 Cal. 894.**

—— Separate Share of — Suit by One Co-Sharer—Colluding Co-Sharers—Parties.

See **Co-Sharers of Land. 3.**

JADU DAS *v.* SUTHERLAND...**I. L. Rep. 4 Cal. 556.**

Digitized by Google

RENT—*contd.*

—— Separate Suits for.

See **Co-Sharers of Land. 1. 2. 3.**

GUNI MAHOMED *v.* MORAN ..**I. L. Rep. 4 Cal. 96.**

AHAMUDIN *v.* GRISH CHUNDER... **Ibid. 350.**

JADU DAS *v.* SUTHERLAND...**I. L. Rep. 4 Cal. 556.**

—— Suit for—under Rs. 100—Appeal.

See **Special Appeal. 4.**

LUNGESSUR KOOER *v.* SOOKHA OJHA...**I. L. Rep. 3 Cal. 151.**

RENT DUE BY FORMER TENANT—Liability of Tenure.

See **Landlord and Tenant. 6.**

RASH BEHARY *v.* PEARY MOHUN... **I. L. Rep. 4 Cal. 346.**

RENT-FREE LANDS—Right to levy Assessment on.

See **Resumption. 2.**

KEVAL *v.* TALUKDARI SETTLEMENT OFFICER...**I. L. Rep. 1 Bom. 586.**

See **Ghatwali Tenure.**

LEELANUND SINGH BAHADOOR *v.* THAKOOR MUNRUNJUN SINGH. **I. L. Rep. 3 Cal. 251.**

RENT PAID JOINTLY TO CO-SHARERS OF LAND—Inability of One Co-Sharer to sue for his Share separately.

See **Co-Sharers of Land. 2.**

AHAMUDIN *v.* GRISH CHUNDER... **I. L. Rep. 4 Cal. 350.**

RENT-SUIT—*Previous Purchase by Mortgagee of Part of Tenure—Ejectment—Right of Purchaser to question by Suit the Validity of Decree for Ejectment, if not a Party to the Suit.*] In a suit for arrears of rent by a *mokuraridar* against his *dur-mokuraridar* a decree was passed ejecting the latter, and, as a consequence, the tenure of the *dar-mokuraridar* was cancelled.

Held, that a mortgagee from the *dur-mokuraridar* who had, previously to the rent-suit, obtained a decree on his mortgage, and himself purchased at the auction sale, and who had not been made a party to the rent-suit, was entitled to question by suit the validity of the decree obtained in the rent-suit ordering the ejectment of the *dur-mokuraridar*. MADHOO PROSHAUD SINGH *v.* PURSHAN RAM.. *Ainslie* and *Maclean*, JJ.....**I. L. Rep. 4 Cal. 520, 1878.**

RENUNCIATION OF PROBATE BY EXECUTOR—PROOF OF EXECUTION OF WILL IN COURT.

See **Hindu Law—Will. 3.**

SURBO MUNGOLA *v.* MOHENDRO NATH.....**I. L. Rep. 4 Cal. 508.**

RE-OPENING FORECLOSURE.

See **Mortgage. 10.**

KALIPROSONNO *v.* KAMINI SOONDURI...**I. L. Rep. 4 Cal. 475.**

REPEAL, EFFECT OF—Pending Proceedings.

See **Civil Procedure Code, Act X. of 1877, § 342.**

RATTANSI KALLIANJI...**I. L. Rep. 2 Bom. 148.**

See **Construction of Statute. 5.**

SITARAM *v.* KHANDERAV... **I. L. Rep. 1 Bom. 286.**

—— Pending Proceedings in Execution of Decree—Appeal.

See **Appeal—Civil. 27.**

THAKUR PRASAD *v.* AHSAN ALI... **I. L. Rep. 1 All. 668.**

—— Of Act XIV. of 1859—Revival of Right to Sue.

See **Limitation. 15.**

NOCOOR CHUNDER *v.* KALLY COOMAR...**I. L. Rep. 1 Cal. 328.**

REPORT UNDER § 181, ACT VIII. OF 1859—OBJECTIONS TO.

See **Practice—Civil. 2.**

SETHS GUJMULL AND OTHERS *v.* MUSST. CHAHEE KOWAR... **L. Rep. 2 I. A. 34.**

REPORTS OF COLLECTORS—*Madras Reg. VII. of* 1817.] Opinions on the private rights of parties, expressed in reports of Collectors under Madras Reg. XVII. of 1817, are not to be regarded as having judicial authority. But being the reports of public officers made in the course of duty, and under statutable authority, they are entitled to great consideration so far as they supply information of official proceedings and historical facts, and also in so far as they are relevant to explain the acts and conduct of the parties in relation to them, and the proceedings of the Government founded upon them. RAJAH MUTTU RAMALINGA SETUPATI *v.* PERIANAYAGUM PILLAI... **L. Rep. 1 I. A. 209.**

S. C. under **Mohunt.**

Digitized by Google

REPORT OF MAGISTRATE—*Criminal Procedure Code, Act X. of* 1872, §§ 133, 135—*Inquiry into Cause of Death—Judicial Proceedings.*] The Magistrate of a Division having held an inquiry, under § 135 of the Criminal Procedure Code, Act X. of 1872, into the cause of the death of a certain person found dead under suspicious circumstances, without making any specific charge against any particular person, drew up a report, which he sent to the Magistrate of the District, embodying the result of his inquiry, and the conclusion at which he had arrived, *viz.*, that the deceased had purposely committed suicide under such circumstances as might raise suspicions against certain persons of having caused his death. Subsequently some proceedings which arose out of that inquiry were taken against one of the petitioners, and those proceedings resulted in an acquittal. On an application by the petitioner and certain other relations of the deceased to the High Court to send for and quash the report :—

Held, that as, under § 135 of the Criminal Procedure Code (Act X. of 1872), the Magistrate was not bound to make a report or come to a finding, the report which he did send to the District Magistrate was not part of a judicial proceeding, and the High Court had no power to send for it.

Quære, whether the petitioners had any *locus standi* at all, the only one of them who had ever been put upon his trial having been acquitted. TROYLOKHANATH BISWAS *v.* RAM CHURN BISWAS...**I. L. Rep. 3 Cal. 742; 3 Cal. Rep. 59, 1878.**

REPRESENTATIVE OF A DECEASED HINDU.

See **Person taking Possession of the Estate of a Deceased Hindu.**

PROSONNO CHUNDER *v.* KRISTO CHYTUNNO...**I. L. Rep. 4 Cal. 342.**

REPRESENTATIVE OF DECEASED JUDGMENT-CREDITOR—RIGHT OF, TO CONTINUE EXECUTION PROCEEDINGS COMMENCED BY HIM.

See **Limitation. 95.**

GULABDAS *v.* LAKSHMAN NARHAR. **I. L. Rep. 3 Bom. 221.**

REPRESENTATIVE VATANDARS.

See **Declaratory Decree. 17. 18. 19. 20.**

REPUDIATION OF WIFE BY AMBIGUOUS EXPRESSION.

See **Mahomedan Law—Divorce. 1.**

HAMID ALI *v.* IMTIAZAN...**I. L. Rep. 2 All. 71.**

REPUTED OWNERSHIP.

See **Insolvency. 3. 4. 5.**

RES JUDICATA.

See **Hindu Law—Gift. 3.**

RUDR NARAIN SINGH *v.* RUP KUAR...**I. L. Rep. 1 All. 734.**

—— Area, Question of.

See **Res Judicata. 12. 13.**

—— Confirmation by Board of Revenue of Penalty Imposed by Collector — Suit against Collector.

See **Res Judicata. 30.**

—— Defendant must Defend on all grounds known to him.

See **Res Judicata. 4. 23. 24.**

—— Determination of Issue not absolutely necessary.

See **Res Judicata. 26.**

—— Determination of Title by Revenue Court

See **Res Judicata. 14. 32. 33.**

—— Determination of Title in Suit Cognizable by Small Cause Court.

See **Res Judicata. 8.**

—— Dismissal of Suit for Want of Jurisdiction.

See **Res Judicata. 2. 7.**

—— Ejectment Suit dismissed for want of jurisdiction—Subsequent Suit for damages.

See **Res Judicata. 2.**

—— Ejectment Suit—Subsequent Suit for Rent.

See **Res Judicata. 17.**

—— Execution Proceedings, Order in.

See **Res Judicata. 3.**

—— Execution Procedings—Question of Legitimacy of Son of Deceased Decree-holder decided in—Act VIII. of 1859, § 208—Act XXIII. of 1861, § 11.

See **Execution of Decree. 9.**

ABEEDOONISSA *v.* AMEEROONISSA. **L. Rep. 4 I. A. 66; I. L. Rep. 2. Cal. 327.**

Digitized by Google

RES JUDICATA—*contd.*

—— Ex-Parte Decree.
See **Res Judicata. 11.**

—— First Suit Against Defendants as Principals—Subsequent Suit as Agents.
See **Res Judicata. 2.**

—— Identity of Title.
See **Res Judicata. 6. 15. 29.**

—— Identity of Parties.
See **Res Judicata. 5.**

—— Intervenor when bound.
See **Res Judicata. 19. 22.**

—— Judgment, without Satisfaction, against One of Several Joint Contractors.
See **Joint Contractors.**
HEMENDRO COOMAR *v.* RAJENDROLALL...**I. L. Rep. 3 Cal. 353.**

—— Mamlatdar's Order under Bombay Act V. of 1864.
See **Bombay Act V. of 1864.**
BASAPA *v.* LAKSHMAPA...**I. L. Rep. 1 Bom. 624.**

—— Money Decree on Mortgage.
See **Res Judicata. 21.**

—— Plaintiff must put forward all his grounds.
See **Res Judicata. 18.**

—— Rent Suit—Subsequent Suit for Abatement.
See **Res Judicata. 10. 11.**

—— Reversioner when Bound by Decree against Hindu Widow.
See **Res Judicata. 16. 25.**

—— Substance, not Form of Suit, to be Regarded.
See **Res Judicata. 6. 9.**

—— "Suit," what is.
See **Res Judicata. 20.**

—— Suit to set aside Decree founded on Proper Issues raised and determined.
See **Dewutter. 1.**
PROSUNNO KUMARI *v.* GOLAP CHAND...**I. L. Rep. 2 I. A. 145.**

1. —— *Act VIII. of* 1859, § 2 — *First Suit against Defendants as Principals — Second Suit as Agents.*] A previous suit, in which the plaintiff elected to sue the defendants as principals, bars a second suit on the same contract in which the same defendants are charged as responsible agents under a trade usage. DEVRAV KRISHNA *v.* HALAMBHAI. *West* and *N. Haridas*, JJ ..... **I. L. Rep. 1 Bom. 87, 1875.**

2. —— *Ejectment Suit dismissed for Want of Jurisdiction—Subsequent Suit for Damages.*] The dismissal in 1862, on the ground of want of jurisdiction, of a suit to eject the defendant from a fishing-ground claimed by the plaintiff, and for damages for trespass thereon, does not bar a subsequent suit by the plaintiff for damages sustained by the plaintiff by reason of the defendant having in 1872 wrongfully disturbed the plaintiff's enjoyment of his right to fish in the sea, by placing nets too close to the plaintiff's. BABAN MACHAYA *v.* NAGU SHRAVUCHA. *Westropp*, C.J., and *N. Harridas*, J.....**I. L. Rep. 2 Bom. 19, 1876.**

3. —— *Execution Proceedings.*] On an application being made to the Deputy Commissioner of Delhi for the execution of a decree passed before Act XIV. of 1859 came into force in the Punjab, that officer, on the 10th December 1869, recorded the following order—"The decree is of a date prior to the introduction of Act XIV. of 1859. It should be executed according to the civil law of the Punjaub; and as, according to the said law, the period of one year was fixed for its execution, and in case that period expires the rule is that the decree should be executed by obtaining the sanction of the Commissioner; and as on the report sent for obtaining sanction the Commissioner did not pass any order either giving sanction or any other order, and as it is not within the power of this Court to execute such a decree, it is ordered that the petition be sent to the Record-room."

No appeal was preferred from this order, but in May 1871 the plaintiff made another application for execution:—

Held, that the order of the 10th December 1869 was not an adjudication within the rule of *res judicata*, or within § 2 of Act VIII. of 1859.
DELHI and LONDON BANK *v.* ORCHARD...**L. Rep. 4 I. A. 127; I. L. Rep. 3 Cal. 47.**
S. C. under **Construction of Statute. 1.**
And **Limitation. 36.**

4. —— *Declaratory Decree — Impartible Property.*] In a suit in which *A.*, a Hindu widow, was plaintiff, and *B.* was one of the de-

Digitized by Google

RES JUDICATA—*contd.*

fendants, the plaintiff sought and obtained a decree for certain lands to which she claimed to be entitled as mother and heiress of her deceased son.

B. subsequently brought a suit against *A*, alleging that he, and not *A.*, had become entitled to the lands on the death of *A.*'s son, under a *kulachar*, or family custom, which excluded female heirs, and gave him a preferential right among male heirs, and thereby sought to recover from her possession of the same lands, and alternatively to obtain a declaration that he was as such heir, if then living, entitled to possession of them on her death, and that a deed executed by her alienating a portion of them was valid only for her lifetime.

Held, that if *B.* did not resist the claim in the former suit upon the ground of family custom, he was not entitled in the present suit to upset the former decision, because he failed to set up a custom which he ought to have relied upon at the time. But it appeared from the record of the present case that the family custom was brought before the Court in the former suit; and the decision in the former suit, that the then plaintiff, *A.*, as mother, was the heiress of her son, and, as such heiress, was entitled to possession, was conclusive against the present plaintiff, *B.*, who was a party to that suit, that she was so entitled, and that she having taken possession under that decree, the plaintiff was barred by the adjudication from recovering possession from her on the ground that she was not the heiress, and that he was entitled to succeed to the property on the death of her son; but the plaintiff was not barred by the adjudication in the former suit from setting up the family custom with the object of showing that on *A.*'s death he would be entitled to succeed her, if living, and was by reason of such heirship entitled to obtain a declaratory decree as to the deed of alienation.

Their Lordships, however, declined to remand the case for an adjudication thereupon.

A declaratory decree was matter of discretion, and while the necessary investigation would cause great delay and expense, the claim of the plaintiff was contingent on his surviving the defendant, and the decree would not bind other members of the family, not parties to the suit, with possibly preferential titles. TEKAIT DOORGA PERSHAD SINGH *v.* TEKAITNI DOORGA KONWARI .....**L. Rep. 5 I. A. 149; I. L. Rep. 4 Cal. 190, 3 Cal. Rep. 31, 1878.**

RES JUDICATA—*contd.*

5. —— *Suit between the same Parties—Act VIII. of* 1859, § 2.] The plaintiff sued to recover certain houses and grounds as belonging to his zemindary, setting forth that the premises in question had been occupied by his paternal grandmother, on whose death the defendants had taken wrongful possession. The defendants claimed to be legally entitled to the premises in question, and contended that the plaintiff's suit was barred, under § 2, Act VIII. of 1859, by reason that the cause of action had already been heard and determined in a previous suit brought by the plaintiff's father in 1862 against the plaintiff's grandmother, and the defendant's father and others, to establish his right to the same premises, which suit had been dismissed. The defendants also pleaded limitation.

It appeared that in the former suit the relief sought by the plaintiff in respect of the property in dispute in the present suit, was to restrain his grandmother from acts of waste; but there was no distinct allegation of fact in the plaint or written statement regarding it, nor anything to connect the present defendant's father therewith, or to disclose any claim thereto by the plaintiff's father, nor was there any charge that she had assigned or intended to assign it to the co-defendants, nor any allegation to show that the co-defendants had any interest whatever in it.

No issue was raised, nor any evidence offered, on either side, in respect of that property, either to show that the plaintiff was entitled to an injunction, or for any other purpose, and the plaintiff's suit was dismissed.

Held, reversing the decisions of the lower Courts, that as regards that portion of the property to which the present suit related, the widow was, in the former suit, substantially the only defendant, and her co-defendants were no parties to the suit, and therefore that under the circumstances the decision in the former suit was not a decision in a suit between the same parties, or parties under whom they claimed, establishing the right of the defendants in the former suit, to the property in question in the present suit, and that the cause of action in the present suit was not determined in the former suit.

Held, also, that the defendant's plea of limitation could not be determined without a finding as to whether the plaintiff's grandmother, who died within the period of limitation, had held

Digitized by Google

RES JUDICATA—*contd.*

the premises with the plaintiff's permission, or in her own right or as a trespasser. THE ZEMINDAR OF PITTAPURAM *v.* THE PROPRIETORS OF THE MUTTA OF KOLANHA.....**I. L. Rep. 2 Mad. 23, 1878; L. Rep. 5 I. A. 206; 3 Cal. Rep. 265.**

6. —— *Identity of Right—Facts infringing it integrally connected with those alleged in Former Suit—Substance of Suit.*] The plaintiff purchased certain lands from the heirs of a Mussulman proprietor, and the defendant purchased other lands of the same estate from their co-heirs. The plaintiff in 1864 sued the defendant to have the sale to the latter set aside; but, as he admitted that he himself was in actual possession of all that he had purchased, his suit was rejected.

The plaintiff then, in 1869, sued the defendant, alleging that he and the defendant being vendees from different co-heirs, their respective lands had not been demarcated according to the shares of their respective vendors, and he asked that such a demarcation should be made. This suit was treated substantially as an ejectment suit, and rejected, on the ground of his admission in the first suit. In appeal to the High Court, the plaintiff alleged that since the admission made by him in the former suit, some of his tenants had attorned to the defendant, and thus deprived him of possession of part of his land; but this not having been stated in the plaint, the Court refused to allow the question to be raised, and confirmed the decision appealed from.

The present suit was founded on the alleged attornment of his tenants in 1868 to the defendant.

The plaintiff contended that though the cause of action was in existence when the second suit was brought in 1869, yet that it had not been adjudicated upon, and that in appeal he had been prevented from arguing on it.

Held, that the plaintiff was estopped; the cause of action in the third suit was the same as that in the second. The second suit, (looking to its substance rather than its form,) rested on an assertion that the defendant had more, and the plaintiff less, land than was the just property of each, and sought a rectification of the alleged injustice. In the present suit also the plaintiff alleged that the defendant possessed too much, and he himself too little. That this

RES JUDICATA—*contd.*

excess and defect were now ascribed to particular acts as a means, did not constitute a really different case or cause of action. There was no allegation of a wholly different right, or group of facts infringing it, in this suit from what there was in the former. The facts were connected in an essential jural unity, so that had the plaintiff's whole case been brought forward before, it would not have involved separate investigations; and the plaintiff could not, therefore, now sue on grounds merely subsidiary to his main ground, on which he sought to re-open the litigation. Having striven to establish his title to land by one means and failed, he could not now establish that title by other means which were equally at his command when the former suit was tried, and so connected with the grounds on which he in that case relied that they ought to have been submitted for consideration together.

In deciding whether a question is *res judicata*, the substance and not the form of the former suit will be regarded. If the cause of action in the second suit rests on facts which are integrally connected with those upon which a right and an infringement of the right have been already once asserted as a ground for the Court's interference, the second suit will be barred. HAJI HASAM IBRAHIM *v.* MANCHARAM KALIANDAS. *West* and *Pinhey*, JJ...**I. L. Rep. 3 Bom. 137, 1878.**

7. —— *Act X. of* 1877, § 13.] The plaintiff in 1876 brought a suit against the defendant in respect of the same subject-matter, and founded on the same cause of action, as in the present suit. The Collector's certificate under § 6 of the Pensions Act (XXIII. of 1871) not having been obtained, the Court rejected the plaintiff's claim in the former suit for want of jurisdiction, but before doing so inquired into and decided, and recorded an opinion on all the issues of fact arising in the case:—

Held, that the Court having found in the former suit that its cognizance of the case was barred by the absence of the Collector's certificate, the opinion expressed by it on the merits of the controversy between the parties could not be regarded as in any way *res judicata* between them. When a suit has failed through a formal defect, and the merits have not been so pronounced on as to constitute a legal relation resting on the act of the Court, another suit is not

Digitized by Google

RES JUDICATA—*contd.*

barred. PUTALI MEHETI *v.* TULJA. *West* and *Pinhey*, JJ.....**I. L. Rep. 3 Bom. 223, 1879.**

S. C. under **Limitation. 91.**

8. —— *Suit for Rent of the Nature Cognizable by a Small Cause Court—Determination of Title.*] The incidental determination of an issue of title in a suit for rent of the nature cognizable in a Small Cause Court does not finally estop the parties to that suit from raising the same issue in a suit brought to try the title. INAYAT KHAN *v.* RAHMAT BIBI. *Turner* and *Spankie*, JJ.....**I. L. Rep. 2 All. 97, 1879.**

9. —— *Act VIII. of* 1859, § 2.] Where a material issue has been tried and determined between the same parties in a proper suit, and in a competent Court, as to the *status* of one of them in relation to the other, it cannot be again tried in another suit between them.

In a suit against an adopted son and his mother to set aside the adoption, the defence was that in a suit by such son to set aside *patnee* leases granted by his adoptive mother, on the ground that she had thereby exceeded her power as the owner of a widow's estate, the plaintiff had intervened, claiming as reversionary heir, and an issue as to the validity of the adoption had been thereafter decided against him:—

Held, that the present suit was therefore barred.

The expression "cause of action," in § 2 of Act VIII. of 1859, cannot be taken in its literal and most restricted sense; it is to be construed rather with reference to the substance than to the form of the action. *Soorjomonee Dayee v. Suddanand Mohapatter* (12 Beng. L. Rep. 304) approved. KRISHNA BEHARI ROY *v.* BROJESWARI CHOWDRANEE .....**L. Rep. 2 I A. 283, 1875; I. L. Rep. 1 Cal. 144.**

10. —— *Act VIII. of* 1859, § 2—*Suit for Rent—Subsequent Suit for Abatement of Rent.*] The plaintiff obtained a *patni* lease of certain villages from the defendant in 1861 at an annual rent, and in 1865 was evicted from portion of the property; she took no steps to obtain an abatement; but as she did not pay any rent for the year 1871, the defendant sued her for the rent due in that year. In that suit the plaintiff set up as a defence that she was entitled to an abatement of Rs. 155 from her rent, Rs. 155 representing the annual value of the property from which she had been evicted. In that suit the Judge held that the amount of abatement to which the plaintiff was entitled should be Rs. 42, and not Rs. 155. No appeal was preferred against that decision. The plaintiff now sued for a permanent abatement of her rent, claiming the precise measure of abatement, *viz.*, Rs. 155, which she had claimed in the suit brought against her by the defendant:—

Held, that the matter was *res judicata* by the decision in the former suit, and that the question of abatement of rent had been thereby determined between the parties not only for one year, but for all future years. NOBO DOORGA DOSSEE *v.* FOYZ BAKSH CHOWDHRY. *Garth*, C.J., and *Birch*, J .. ..**I. L. Rep. 1 Cal. 202, 1875.**

Note.—In giving judgment in the above case, *Garth*, C.J., said (p. 205):—

"There is no doubt as to what the law is upon the subject of estoppel. The difficulty is in applying the law to such a case as the present. Each year's rent is in itself a separate and entire cause of action, and if a suit be brought for a year's rent, a judgment obtained in that suit, whatever the defence might be, would seem only to extend to the subject-matter of the suit, and leave the landlord at liberty to bring another suit for the next year's rent, and the tenant at liberty to set up to that suit any defence she thought proper.

"But it is said, on the other hand, that in the former suit, the entire question of what ought to be the permanent abatement of rent during the whole period of the lease, was substantially and necessarily tried and determined, and that neither the plaintiff nor defendant are at liberty to reopen that question. The principle on which the abatement was made, the value of the land, the measurements, and other circumstances which form the materials on which the Judge would estimate the amount of the abatement, would be applicable to one year as well as to another. Even assuming that the judgments in the former suit were not binding between the parties as actual estoppel, it would afford such cogent evidence, that the Judge in this suit, *in the absence of entirely fresh materials*, would be perfectly right in acting upon it."

On the authority, however, of *Mohima Chunder Monsomdar* v. *Asrada Dassia* (15 Beng. L. Rep. 251) and *Rakhal Doss Singh* v. *Srcemuttee Heera Motee Dossee* (23 W. Rep. 282), the case was decided as above stated.

11. —— *Rent-Suit*—Ex-parte *Decree—Time-barred Decree, Evidence of.*] A decree obtained

Digitized by Google

RES JUDICATA – *contd.*

ex-parte is, in the absence of fraud or irregularity, for purposes of evidence as good as any other decree, and as binding, for all purposes, as a decree obtained in a contested suit. Such a decree is admissible in evidence, though the period for executing it has expired.

Where the plaintiff sued the defendant for a year's rent at the same rate which had been decreed to him for the previous year in a suit which he had brought against the same defendant for rent of the same property, and relied on the former decree, which had been obtained *ex-parte*, as evidence of the amount of rent due to him by the defendant :—

Held, following *Nobo Doorga Dossee* v. *Foys Baksh Chowdhry* (I. L. Rep. 1 Cal. 202 ; S. C. 24 W. Rep. 403), that in the absence of any evidence of any fresh circumstances having arisen since the former decree was made, which would justify on the one hand an abatement, or on the other hand an enhancement, of the rent decreed in the former suit, that decree determined the amount of rent due from the defendant to the plaintiff. BIRCHUNDER MANICKYA v. HURRISH CHUNDER DASS. *Garth*, C.J., and *Birch*, J ..**I. L. Rep. 3 Cal. 383 ; 1 Cal. Rep. 585, 1878.**

12. —— *Suit for Enhancement of Rent—Area.*] In a previous suit the present plaintiff had sued the present defendant for the amount originally fixed as rent in a lease which contained a condition that if, on measurement of the land leased, it should turn out that the land was more or less than the estimated area named in the lease, the rent should be increased or decreased in proportion. In that suit the defendant claimed to have the rent reduced in accordance with the terms of the lease, and thereupon a measurement was made, which showed that the quantity of land held by the defendant was in excess of that named in the lease ; that suit was determined in the plaintiff's favour for the rent claimed. In a subsequent suit brought for enhancement of rent on the ground that the land leased contained more than the quantity estimated in the lease :—

Held, that the measurement adopted by the Court in the former suit was not binding on the defendant in the present suit, as regards the amount of excess. The judgment in the former case was only conclusive between the parties on the question whether the land demised was or

RES JUDICATA—*contd.*

was not less than, or equal to, the estimated quantity. *Nobo Doorga Dossee* v. *Foys Baksh Chowdhry* (I. L. Rep. 1 Cal. 202 ; S. C. 24 W. Rep. 403) distinguished, on the ground that in that case the point decided in the first suit was necessary to the due determination of the issues in both suits. EKRAM MUNDUL v. HOLODHUR PAL. *Garth*, C.J., and *Birch*, J...**I. L. Rep. 3 Cal. 271, 1878.**

S. C. under **Enhancement of Rent. 8.**

13. —— *Suit for Rent—Question of Area.*] *A.* sued *B.* for arrears of rent. *B.* admitted the sum claimed, but contended that the rent was due for a larger area of land than that specified in the plaint. An issue was framed on that contention and decided against *B.* In a subsequent suit by *B.* to have it declared that a sum of money, equal in amount to the sum paid on admission in the former suit, comprised the rent due on all the lands held by him under *A.* :—*Held*, that such suit was barred as being *res judicata*. BUSSUN LALL SHOOKUL v. CHUNDER DASS. *Garth*, C.J., *Jackson* and *Pontifex*, JJ ..**I. L. Rep. 4 Cal. 636 ; 4 Cal. Rep., 1879.**

14. —— *Act XVIII. of* 1873. § 95—*Title.*] *S.* applied to the Revenue Court, under Act XVIII. of 1873, § 95, Cl. (*n*), for the recovery of the occupancy of certain land, alleging that the occupancy of such land had devolved upon her by inheritance from her husband, and that the landholder had wrongfully dispossessed her. The landholder set up as a defence that *S.* was not entitled to the occupancy by inheritance, but that she was a trespasser. The Revenue Court held that *S.* was entitled to the occupancy of the land by inheritance, and granted her application. The landholder then sued *S.* in the Civil Court for the possession of the land :—

Held, *per Turner* and *Pearson*, JJ.—That the real question raised, tried, and determined in the application made by *S.* in the Revenue Court, under Cl. (*n*), § 95 of Act XVIII. of 1873, was whether she was the widow and heir of her husband. An application such as *S.* made, could only, under the provisions of § 95 of Act XVIII. of 1873, be entertained by Courts of Revenue, and no other Court can take cognizance of any dispute or matter on which such an application might be made. The question, therefore, of the title of *S.* was *res judicata*, and not open to re-adjudication in the present suit.

Per Spankie and *Oldfield*, JJ., *contra*.

Digitized by Google

RES JUDICATA—*contd.*

Per Oldfield, J.—The jurisdiction of the Revenue Court in the matter of an application under Cl. (*n*) of § 95 of Act XVIII. of 1873, is confined to the determination of the matter of the application, the dispossession otherwise than by law of the tenant. It was not intended to give the Revenue Court, when disposing of such applications, a jurisdiction to decide finally questions of title or succession under the Hindu law. SUMBHU NARRAIN SINGH *v.* BACHCHA...**I. L. Rep. 2 All. 200, 1879, F. B.**

15. —— *Act VIII. of* 1859, § 2 — *Former Suit to recover Same Property on Different Title.*] Certain property originally belonging to the husband of the plaintiff, was conveyed by him by deed of gift to his daughter after her marriage with the defendant, as her *stridhan*. After the daughter's death, the plaintiff sued the defendant to recover this property, on the ground that the deed of gift was a forgery, and that she was entitled to it as heiress of her husband. That suit was dismissed, on the ground that the deed of gift was genuine and valid. The plaintiffs then instituted the present suit against the defendant to recover the same property, on the ground that she was entitled thereto as heiress of her daughter:—

Held,—*Garth*, C.J., dissenting,—that the suit was barred. The plaintiff's cause of action in the first suit, and which obliged her to seek the aid of the Court, was that she alleged she had been wrongfully deprived of possession of property she was entitled to have, and she had to make out a title to possession such as to prevail against the defendant. And though the title she now set up was a different title from that set up in the former suit, it was not a *new* title, newly acquired, and which could not, therefore, have been set up in the former suit, but was a title which the plaintiff was entitled and bound to have put forward in that suit. The cause of action was not changed, within the meaning of § 2 of Act VIII. of 1859, by the change of title set up. DENOBUNDHO CHOWDHRY *v.* KRISTOMONER DOSSEE...**I. L. Rep. 2 Cal. 152, 1876, F. B.**

Dissented from in **I. L. Rep. 4 Mad. 308.**

16. —— *Act VIII. of* 1859, §§ 2 *and* 170—*Hindu Widow—Reversioner.*] *A.*, a Hindu widow, brought a suit against the defendant to recover her husband's share of certain joint property. After having partially examined one of her witnesses, *A.* declined to proceed further with their examination, and cited the defendant to attend, and on his failure to do so, her suit was dismissed. No appeal was preferred from that order, and *A.* subsequently died, leaving a daughter, the plaintiff in the present suit, and who sued now on behalf of her minor sons, as reversioners to their grandfather's share, to recover the share which was the subject-matter of the former suit. The defendant was summoned as a witness, but did not appear:—

Held, that the rule that a decree against the widow binds the reversioner is subject to the qualification that there has been a fair trial of the right in the former suit. The suit, therefore, was not barred, under § 2 of Act VIII. of 1859, as being *res judicata*, until it was shown that the former decree had been obtained after a fair trial; and the defendant having refused to come in and give his evidence upon that point, the Court was justified in dealing with the case under § 170 of Act VIII. of 1859, and giving the plaintiff a decree BRAMMOYE DASSEE *v.* KRISTO MOHUN MOOKERJEE. *Markby* and *Ainslie*, JJ...

I. L. Rep. 2 Cal. 222, 1879.

17. —— *Beng. Act VIII. of* 1869, § 29—*Tenancy in Abeyance.*] *A.*, the zemindar, granted a *patni* lease of certain talooks to *B.*, who assigned it to *C.* and *D.* On *B.*'s death *C.* and *D.* applied to the Collector for registration of the *patni* talook in their name as assignees of *B.* *A.* objected to the registration, on the ground that the lease enured only for the life of *B.* *A.*'s objection being overruled, he instituted a regular suit to eject *C.* and *D.*, the present defendants, which was decided against *A.* finally in the Privy Council in 1874. Pending this litigation, the zemindar sued to recover the rent for 1868, not on the basis of the *patni* lease, but for use and occupation, treating the tenants as mere trespassers. This suit was dismissed, on the ground that the plaintiff ought to have sued on the lease. In 1875, the plaintiff brought the present suit for the rent of 1868 on the *patni* lease. The defendants pleaded *res judicata* and limitation. The plaintiff contended that the suit was within time, on the ground that the right to recover the rent was in suspense during the pendency of the litigation:—

Held, that the claim was not barred as being *res judicata*, but was barred by § 29 of Beng. Act VIII. of 1869.

Digitized by Google

RES JUDICATA—*contd.*

A landlord, by merely denying the tenancy and bringing a suit to recover possession, in which he is ultimately unsuccessful, does not put an end to the tenancy so long as the litigation is going on. Such a mere denial of the landlord, or a denial coupled with an unsuccessful attempt to eject the tenants, does not in any way affect the tenant's position.

The defendant's position in this case remained, therefore, wholly unaffected by the litigation above mentioned, and there was no ground for departing from the ordinary rule that the rents fell due in each successive year according to the dates specified in the native *pattas*. WATSON & Co. *v.* DHONENDRA CHUNDER MOOKERJEE. *Markby* and *Mitter*, JJ...**I. L. Rep. 3 Cal. 6, 1877.**

18. —— *Suit for Specific Sum of Money.*] In a suit to recover a moiety of the amount of a decree realized by the defendant, it appeared that the plaintiff and defendant were uterine brothers, and had in 1870 effected a partition of the property they had inherited from their father, and thereby agreed that each should be entitled to a moiety of all moneys that might be subsequently recovered on account of a certain shop which formed part of the property inherited and then divided. In 1871, the defendant recovered a certain sum on a decree passed in 1864. In 1872, the plaintiff, ignoring the partition, brought a suit against the defendant, for an account of the joint business, which he treated as still subsisting, and for the recovery, among other items, of the said moiety of the decree. That suit was dismissed, on the ground that the Court found that by the partition the business was put an end to. The plaintiff then instituted the present suit to recover the same moiety of the decree, basing his claim on the terms of the partition previously effected with the defendant :—

Held, in accordance with *Dinobundhoo Chowdhry* v *Kristomonee Dossee* (I. L. Rep. 2 Cal. 152), that if a plaintiff sues for a specific sum of money, he must put forward every right under which he claims at that time that sum of money. The plaintiff might in the former suit have claimed, that even if he was not entitled to a share in the decree as an item of the general account which he claimed, he still was entitled to it on the terms of the partition itself, whether the business continued after the partition or not. The plaintiff, therefore, having two rights under which he could recover the share of the decree, having put forward and claimed on one of such rights only in the former suit, was, in accordance with the decision in the above case, precluded from bringing a subsequent suit for the same share, based upon the other right which might have been, but was not asserted in the former suit. BHEEKA LALL *v.* BHUGGOO LALL. *Markby* and *Prinsep*, JJ...**I. L. Rep. 3 Cal. 23, 1877.**

Dissented from in...**I. L. R. 4 Mad. 303.**

19. —— *Suit for Rent.*] The plaintiffs brought this suit to establish, as against the defendants, their title to certain lands in the occupation of a tenant. In a previous suit instituted by one of the present defendants against the tenant for rent, one of the present plaintiffs (representing the rights now claimed by all of them) intervened as a defendant, on the ground that he was the person entitled to the rent, and failed to establish his claim :—

Held, following *Hurri Sunkur Mookerjee* v. *Muktaram Patro* (15 Beng. L. Rep. 238; S. C. 24 W. Rep. 154), that the plaintiffs in this case were barred by the judgment in the former suit.

When once it is made clear that the self-same right and title was substantially in issue in both suits, the precise form in which the suit was brought, or the fact that the plaintiff in the one case was defendant in the other, becomes immaterial. GOBIND CHUNDER KOONDOO *v.* TARUCK CHUNDER BOSE...**I. L. Rep. 3 Cal. 145; 1 Cal. Rep. 35, 1877, F. B.**

20. —— *Act X. of* 1877, § 13—*Act XXIV. of* 1867, § 60—*Act II. of* 1874, § 63—"*Suit.*"] An application by petition under § 63 of Act II. of 1874 is a suit within the meaning of § 13 of Act X. of 1877, and therefore such an application is barred by the disposal of a former application in the same matter, under the same section, or under § 60 of Act XXIV. of 1867, which the Act of 1874 repeals; this is so whether the order is one for payment of money or one dismissing the petition. § 63 of Act II. of 1874 contemplates that the money which is the subject of the petition may be claimed by parties other than the applicant, and that those parties may appear and be represented at the hearing; and the words "binding on all parties"

Digitized by Google

RES JUDICATA—*contd.*

were intended to make the order binding on such parties as well as on the petitioner.

The order passed under that section can be reviewed, under § 623 of Act X. of 1877. SMITH *v.* SECRETARY OF STATE. *Garth*, C. J., and *Markby*, J..... **I. L. Rep. 3 Cal. 340, 1878.**

21. —— *Simple Mortgage Bond — Mortgagee's Lien—Money Decree — Sale of Mortgagor's Right, Title, and Interest in Execution of—Registration Act XX. of* 1866, § 53, *Summary Procedure under—Act VIII. of* 1859, §§ 2 *and* 7.] The plaintiff had a simple mortgage bond, which was specially registered and charged the lands in suit with other properties. Certain creditors of the mortgagor attached the land under mortgage, and the sale was fixed for the 24th of February 1871. Meantime, on the 21st of February 1871, the plaintiff obtained a summary decree under the provisions of Act XX. of 1866, § 53. The lands were sold under the creditor's attachment, and purchased by the defendant. The plaintiff subsequently, on the 30th of July 1871, sold the right, title, and interest of the mortgagor under an attachment issued under his summary decree, and became the purchaser thereof. The plaintiff now sued the mortgagor and the defendant to enforce his lien against the mortgaged properties:—

Held, following *Haran Chunder Ghose* v. *Dinobundho Bose* (14 Beng. L. Rep. 408; S C 23 W. Rep. 187), that the plaintiff having deliberately elected to take a mere money decree against the mortgagor, in the summary proceedings instituted by him, although there was no intervening charge or interest, the present suit was not maintainable.

It was by no means certain that the operation of § 7 of Act VIII. of 1859 would not in itself be an answer to the present suit, as a suit in which full relief could have been given, might, at the time of the summary decree, have been instituted against the mortgagor. DOSS MONEY DOSSEE *v.* JONMENJOY MULLICK. *Jackson* and *Kennedy*, JJ...**I. L. Rep. 3 Cal. 363; 1 Cal. Rep. 446, 1878.**

Overruled by *Jonmenjoy Mullick v. Dossmoney Dossee*..... **I. L. Rep. 7 Cal. 714; 9 Cal. Rep. 353.**

See **Vol. 2, Col. 979.**

And *see* also **I. L. Rep. 8, Cal. 700.**

RES JUDICATA—*contd.*

22. —— Butwarra *Proceedings.*] The plaintiff sued the defendant to recover certain lands that had been allotted to him in *butwarra* proceedings carried out under Reg. XIX. of 1806. In a former suit brought by the defendant against a tenant of a portion of the land in dispute for rent, the plaintiff intervened, on the allegation that he was the rightful landlord; but he put forward no claim to the property based on the *butwarra* proceedings. In that suit, the defendant, the then plaintiff, obtained a decree on the ground that he had established a right to, and was in possession of, the lands in dispute:—

Held, that the adjudication in the former suit in which the question of title between the plaintiff and defendant was distinctly raised and determined, was a bar to the present suit. As, moreover, the former suit was instituted two years after the conclusion of the *butwarra*, any right to *khas* possession which the plaintiff considered himself entitled to under the *butwarra*, should have been expressly set forth in that suit. The plaintiff, therefore, was estopped, under the ruling in *Gobind Chunder Koondoo* v. *Turuck Chunder Bose* (I. L. Rep. 3 Cal. 145; S. C. 1. W Cal. Rep. 35), from setting up this title in the present suit. BEMOLA-SOONDURY CHOWDHRAIN *v.* PANCHANUN CHOWDHRY. *Kemp* and *Morris*, JJ...1. **L. Rep. 3 Cal. 705, 1878.**

S. C. under **Butwarra.**

23. —— *Act VIII. of* 1859, § 2.] When a plaintiff claims an estate, and the defendant, being in possession, resists that claim, he is bound to resist it upon all the grounds that it is possible for him, according to his knowledge, then to bring forward, and if he fails to do so, he is estopped from asserting any of them afterwards.

Where, therefore, the defendants sued the plaintiff to recover possession of property, in the plaintiff's possession, which had been purchased by them, and the plaintiff only denied the title of the defendants' vendor, alleging that he was in possession of the property in virtue of its purchase at an auction sale, and the defendants obtained a decree:—

Held, that the plaintiff was debarred from bringing a subsequent suit against the defendants to recover possession of the same property on a claim of a right of pre-emption in respect thereof. Such a right would have been a good answer to the former suit by the defendant, and might and ought to have been then asserted by

Digitized by Google

RES JUDICATA—*contd.*

the plaintiff. BALDEO SAHAI *v.* BATESHAR SINGH. *Turner*, C.J., and *Spankie*, J.....**I. L. Rep. 1 All. 75, 1875.**

24. —— *Act VIII. of* 1859, § 2.] When a plaintiff claims an estate, and the defendant being in possession, and knowing that he has two grounds of defence raises only one, he shall not, in the event of the plaintiff obtaining a decree, be permitted to sue on the other ground to recover possession from the plaintiff.

Where, therefore, the defendant purchased an estate in the plaintiff's possession and sued him to recover possession of it, and the plaintiff resisted the suit merely on the ground that the sale to the defendants was fraudulent and without consideration, and the defendants obtained a decree, and the plaintiff then sued claiming a right of pre-emption in respect of the property, a claim which he might have asserted in reply to former suit:—

Held, following *Baldeo Sahai* v. *Bateshar Singh* (I. L. Rep. 1 All. 75), that he was debarred from suing to enforce such claim. JADU LAL *v.* RAM GHOLAM. *Pearson* and *Spankie*, JJ...**I. L. Rep. 1 All. 316, 1876.**

25. —— *Hindu Widow—Reversioner.*] A Hindu widow succeeding to her husband's estate as heir represents the estate fully, and reversioners claiming to succeed after her are bound by decrees relating to her husband's estate obtained against her without fraud or collusion. On her husband's death, a Hindu widow obtained possession of his estates as his heir, and in a suit against her for possession thereof by certain persons claiming to succeed to the estate as rightful heirs, the widow pleaded that the property was separate and self-acquired property of her husband. The plaintiffs in that suit, however, obtained a decree on the footing of the property being the undivided property of themselves and the deceased:—

Held, that that decree was a bar to a suit against the same persons by the daughter claiming the estate in succession to the widow, the decree against the latter having been fairly and properly obtained. NANDKUMAR *v.* RADHA KUARI. *Stuart*, C.J., and *Oldfield*, J...**I. L. Rep. 1 All. 282, 1876.**

26. —— *Act VIII. of* 1859—*Determination of Issue not Absolutely Necessary for the Determination of the Case.*] In a suit on a bond for money charged on immoveable estate, it appeared that the bond had been given to one *T.*, and charged certain immoveable property. The obligors subsequently sold the property to the defendant. *T.* subsequently obtained a decree on the bond against the obligors, which declared the property liable to be sold in execution of the decree. The defendant, having failed in his objection to the sale in execution of the property, sued *T.* and the obligors of the bond to establish that the property was not liable to sale. The Munsiff fixed as issues, whether the property was liable to be sold in execution of *T.*'s decree, and whether the bond was collusive, and determined that the property was not liable to be sold in execution of *T.*'s decree, as that decree, so far as it affected the property, was passed without jurisdiction; and on the second issue he found that "though an *ex-parte* decree was given in favour of *T.*, yet, as *T.* could not prove the validity of the bond in this Court, the bond must be considered as collusive." *T.* appealed up to the High Court, and the decree of the Munsiff was confirmed. In his appeals he took no objection to the determination on the issue respecting the bond:—

RES JUDICATA—*contd.*

Held, that though the Munsiff might have disposed of the former suit without adjudicating on the issue as to the validity of the bond, on the basis of his findings on the other issues tried by him, yet he was perfectly justified in laying down that particular issue for trial, as it arose out of the pleadings, and an adjudication on it might have been necessary, and his finding thereon rendered his decision in the case more firm and complete; and he was not bound to refrain from adjudicating on it, under the circumstances, nor could his adjudication thereon be treated as a nullity. If his finding were open to objection on the ground of irrelevancy or error, the objection might have been taken in the appeal preferred by *T.*; but it not having been so taken, the finding remained undisturbed, and the question determined by it was *res judicata*, and not open to re-adjudication. MAN SINGH *v.* NARRAYAN DAS. *Pearson* and *Spankie*, JJ...**I. L. Rep. 1 All. 480, 1877.**

Note.—Where the word 'obligors' appears above, the word in the report is 'obligees,' but it is apprehended that that is probably an error.

27. —— *Act VIII. of* 1859, § 2.] One *J. R.* had four sons, *B.*, *M.*, *J.*, and *R.* *J.* died in 1868, and *R.* previously leaving a widow *D.*,

Digitized by Google

RES JUDICATA—*contd.*

died in 1871, leaving a daughter, the defendant. The plaintiffs, the representatives of *M.*, on the death of the defendant's mother *D.*, sued the defendant in 1874 for the property in question, alleging that they were the heirs of *R.* and *D.*, the defendant's deceased father and mother, and that *R.* was separate in estate from all his brothers. The defendant pleaded in that suit, that after *R.*'s death *D.* had adverse possession of the property in question, and that she was entitled thereto by inheritance; and the finding was that "it had been established that for a long period *R.*, and after his death his widow *D.*, had separate and adverse possession of the property, and that, under the circumstances, the daughter" (*i.e.*, the present defendant) "had according to Hindu law, the right of inheritance to the estate left by *R.* and *D.* as against the plaintiffs." The plaintiffs then subsequently sued the defendant to recover the same property, alleging that *J.* and *R.* lived and held the property as joint property, and that *J.* succeeded to *R.*, and that they were his heirs :—

Held, that the judgment in the former suit was final in respect of the defendant's title as against the plaintiffs, whether they claimed in that suit as the heirs of *R.* or of *J.*: for at that time any title they had as heirs of *J.* had already accrued, and the entire character of *D.*'s and the defendant's title, and possession as against them, was opened out by the pleadings and properly fell to be, and was, decided in that case, and could not be raised again. RADHIA *v.* BENI. *Pearson* and *Oldfield*, JJ.....**I. L. Rep. 1 All. 560, 1878.**

28. —— *Execution of Decree—Jurisdiction* — Lis pendens.] In execution of a decree obtained by *B.* against *R.*, the whole of certain property in the possession of *R.* was attached and advertised for sale. *H.* and *M.* preferred a claim to a share in such property, but their claim was disallowed. They therefore sued *B.* and the legal representative of *R.*, who had meantime died, to establish their right to, and obtain possession of, their share. This suit was instituted in the Court of the Munsiff, who had no jurisdiction to entertain it. The Munsiff, on the application of *H.* and *M.*, requested the Court executing the decree of *B.* to postpone the sale, but this request was refused, and the property was purchased by the plaintiff. It was notified at the sale that the suit of *H.* and *M.* was pending, and before the confirmation of the plaintiff's

RES JUDICATA—*contd.*

sale the Munsiff gave *H.* and *M.* a decree, which was confirmed on appeal by the High Court. The plaintiff did not intervene in this suit, nor take any steps to get the decree set aside, but instituted a suit against *H.* and *M.* to recover possession of the share for which they had obtained a decree, in virtue of his auction purchase :—

Held, that the plaintiff was not bound to intervene in the Munsiff's Court, which had no jurisdiction to dispose of the matter, and could not be bound by the decree, which was patently invalid, and for that reason did not bind even the parties to the suit in which it was passed. The decree which was passed in that suit being invalid for want of jurisdiction, and a nullity, the question which was tried and determined in that suit was not *res judicata*, and was open to be adjudicated in the present suit. The plaintiff was not bound to take steps to get the decree set aside by means of appeal, nor did his omission to do so render it binding on him.

Quære, whether the doctrine of *lis pendens* applies to this case. That doctrine seems to be applicable to cases in which the alienation is of a voluntary nature, and not to an alienee who has bought a property sold in execution of a decreee. ALI SHAH *v.* HUSAIN BAKHSH. *Pearson* and *Oldfield*, JJ...**I. L. Rep. 1 All. 588, 1878.**

29. —— *Identity of Bases of Claim*] The plaintiff, as heir of the late Zemindar of Pittapuram, sued to recover from the defendants certain houses and grounds in the fort of Pittapuram, alleged to form part of an ancient zemindari, and to have been occupied by the plaintiff's grandmother as her place of residence until her death in 1870, since which time the defendants, who have lived with her, continued in occupation, and refused to quit.

It appeared that the plaintiff had formerly brought a suit against his grandmother and the father and sister of the defendants to recover two estates not now in question, and to impeach the acts of his grandmother in regard to other property belonging to the zemindari, assigned to her for maintenance. A question was raised in that suit whether the property, the subject-matter of the present suit, was included in the latter property, and it was found as a fact that it was, and the suit was dismissed as to such property, the judgment stating that no evi-

Digitized by Google

RES JUDICATA—*contd.*

dence had been offered respecting it on either side; but no distinct issue was raised with reference to this property. The plaintiff, however, in that suit sought to restrain his grandmother from making illegal transfers of the property, and to cancel two documents of transfer made and registered by her:—

Held, that the decision in the former suit was an adjudication by a competent Court between the same parties, or parties under whom they claimed substantially in respect of the property now in dispute, and, though the relief sought was different, new circumstances having occurred the title now sued upon was the same which was formerly put forward. That the plaintiff's grandmother held property belonging to the zemindari as part of her maintenance was a question distinctly raised by the pleadings in the former suit, and plaintiff's failure to produce evidence in support of that issue, which he was bound to produce, did not make the order of dismissal passed in consequence of his default the less an adjudication. The present suit, therefore, was barred. RAMA RAO *v.* SURIYA RAO. *Morgan*, C.J., and *Innes*, J...**I. L. Rep. 1 Mad. 84, 1876.**

Reversed on appeal in ..**L. Rep. 5 I. A. 206; I. L. Rep. 2 Mad. 23;** *supra.* **5**

30. —— *Act VI. of* 1863 — *Confirmation by Board of Revenue of Penalty imposed by Collector —Suit against Collector.*] In a suit against the Collector of Sea Customs, Madras, to recover damages for the wrongful and illegal fining of the plaintiff in respect of certain opium alleged by the defendant to have been smuggled by, or on behalf of, the plaintiff from Madras to Ceylon, where the plaintiff resided, and for the wrongful seizure and conversion of certain property belonging to the plaintiff, in order to satisfy such fine, it appeared that the Board of Revenue, on appeal by the plaintiff under the provisions of Act VI. of 1863, confirmed the defendant's award. It was contended that, inasmuch as Act VI. of 1863 provides a special tribunal, *viz.*, the Board of Revenue, to take cognizance of appeals from the adjudication of the Custom House Officer under that Act, the decision of that tribunal was final; and that the cognizance of the present suit was precluded thereby:—

Held, that to say that the present suit was

RES JUDICATA—*contd.*

barred by the decision of the Board of Revenue, confirming the adjudication made by the defendant, because the cause of action had been thus heard and determined by a competent Court, was to misapply the term "cause of action." The cause of action which came before the defendant, was the alleged violation by the plaintiff, within the defendant's jurisdiction, of the provisions of Act VI. of 1863. No separate cause of action arose by reason of the appeal, and there was, therefore, no cause of action adjudicated on by the Board of Revenue other than that which was before the defendant. The cause of action in the present suit was entirely distinct, and the suit, therefore, was not barred. COLLECTOR OF SEA CUSTOMS, MADRAS, *v.* PUNNIAR CHITHAMBARAM...**I. L. Rep. 1 Mad. 89, 1876, F. B.**

See the Judgment of *Innes*, J., p. 111 *seq.*

S. C. under **Act XVIII. of 1850** and **Jurisdiction. 13.**

31. —— *Suit for Rent.*] The plaintiff in 1873 sued the defendant for arrears of rent due on a certain *jote*, alleging that it was an *ootbundee* tenure, and that the defendant was liable to pay rent at the rate of Re. 1 per *biga*. The defendant pleaded that the *jote* was held by him at a uniform rent for more than twenty years, and this contention was supported by the Court. The plaintiff then gave the defendant notice of enhancement for increase of area found by measurement, and holding below the prevailing rates, and sued to recover rent for two years at the rate of Rs. 16, and for one year at an increased rate on the larger area. To this suit the defendant made the same defence as in the previous suit:—

Held, that the decision in the previous suit was not a bar to the present suit. There were two questions for consideration; one, whether there had been a uniform payment of rent for twenty years, and if so, whether the presumption which the law directs to be raised from a uniform payment of rent for twenty years had been rebutted by the plaintiff; upon neither of which questions was the decision in the former suit conclusive on either point. Though the Court, in the former suit, did express an opinion that for twenty years rent had been paid at a uniform rate, that was not a question in issue in such a manner as to make the decision in the former suit conclusive on the

Digitized by Google

RES JUDICATA—*contd.*

point. GOPEE MOHUN MOZOOMDAR *v.* HILLS. *Markby* and *Prinsep*, JJ.....**I. L. Rep. 3 Cal. 789, 1878.**

32. —— *Determination of Title—Act XIX. of* 1863, §§ 8, 9.] Where *M.*, the recorded proprietor of an estate, applied to have his share of such estate separated, and an objection was made to such separation by *H.*, another recorded proprietor of the estate, which raised the question of *M.*'s proprietary right to a portion of his share, and the Collector proceeded, under § 8 of Act XIX. of 1863, to inquire into the merits of such objection, and decided that *M.*'s interest in such portion of his share was that of a mortgagee, and not a proprietor, and *M.* did not appeal against such decision, which became final :—

Held, in a suit in the Civil Court by *M.* against *H.* in which he claimed a declaration of his proprietary right to such portion, that a fresh adjudication of his right was barred. HAR SAHAI MAL *v.* MAHARAJ SINGH. *Pearson* and *Oldfield*, JJ...**I. L. Rep. 2 All. 294, 1879.**

33. —— *Land-holder and Tenant—Determination by Revenue Court of Title under a Lease, on an application under* § 39 *of Act XIX. of* 1873.] The plaintiffs in this suit, land-holders, had caused a notice of ejectment to be served on the defendants, their tenants under a lease, on the ground that the tenancy had expired. The defendants applied to the Revenue Court, under § 39 of Act XIX. of 1873, contesting their liability to be ejected, on the ground that the lease was a perpetual lease. The Revenue Court held, with reference to the word "*istimrari*" contained in the lease, that the lease was perpetual, and the defendants were not liable to be ejected. The plaintiffs thereupon sued in the Civil Court for the cancelment of the word "*istimrari*" in the lease, on the ground that it had been fraudulently inserted :—

Held, on appeal from the decree of the lower Appellate Court dismissing the suit as barred by the decision of the Revenue Court, that it was not so barred, the matter in dispute being peculiarly within the jurisdiction of the Civil Court, and not one which a Revenue Court was competent finally to determine on an application under § 39 of Act XIX. of 1873. HASAM SHAH *v.* GOPAL RAI. *Oldfield* and *Straight*, JJ.....**I. L. Rep. 2 All. 428, 1879.**

RE-SALE IN EXECUTION OF DECREE

—Appeal lies from Order on Application to make Defaulting Purchaser liable for Loss on.

See **Appeal—Civil. 17.**

RAM DIAL *v.* RAM DAS . ...**I. L. Rep. 1 All. 181.**

—— *Act VIII. of* 1859, § 254—*Right of Judgment-Creditor.*] Where property has been sold under a decree, and the purchaser at the execution sale makes default in payment of the purchase-money, and the property is in consequence re-sold for a less sum than was bid at the first sale, the judgment-debtor is not entitled to credit for the full amount bid at the first sale, but only for the amount realized by the second sale ; and the judgment-creditor's remedy is not limited by § 254 of Act VIII. of 1859, to a suit against the defaulting purchaser, but he may recover the balance of his debt from his judgment-debtor, who may perhaps have his remedy over against the defaulting purchaser. *Joolraj Singh* v. *Gour Bukshlal* (7 Cal. W. Rep. Civ Rul., 100) dissented from. ANANDRAV BAPUJI *v.* SHEIKH BABA. *Melvill* and *Kemball*, JJ.....**I. L. Rep. 2 Bom. 562, 1878.**

RESERVOIR.

See **Penal Code, § 277.**

EMPRESS *v.* HALADHUR PAROE...**I. L. Rep. 2 Cal. 383.**

RESIDENCE.

See **Civil Procedure Code, Act X. of 1877, § 380.**

MAHOMED SHUFFLI *v.* LALDIN ABDULLA.....**I. L. Rep 3 Bom. 227.**

See **Jurisdiction. 3.**

FATIMA BEGAM *v.* SAKINA BEGAM. **I. L. Rep. 1 All. 51.**

—— Devise on Condition of.

See **Will. 10.**

GANENDRO MOHUN *v.* RAJAH JUTTENDRO MOHUN...**L. Rep. 1 I. A. 387.**

RESIDENCE BY HINDU WIDOW IN FAMILY HOUSE NOT NECESSARY TO ENTITLE HER TO CLAIM MAINTENANCE.

See **Hindu Law—Maintenance of Widow. 2. 3. 7.**

Digitized by Google

RESIDENCE BY HINDU WIDOW IN FAMILY HOUSE NOT NECESSARY TO ENTITLE HER TO CLAIM MAINTENANCE—*contd.*

RANGO VINAYAK *v.* YAMUNABAI... I. L. Rep. 3. Bom. 44.

KASTURBAI *v.* SHIVAJIRAM...Ibid. 372.

NARAYANRAO *v.* RAMABAI.....L. Rep. 6 I. A. 114; I. L. Rep. 3 Bom. 415.

RESIDUARY REQUEST TO CHARITY—Application of Doctrine of Cy-près when.

See **Will. 11.**

MAYOR OF LYONS *v.* ADVOCATE GENERAL OF BENGAL ..L. Rep. 3 I. A. 32; I. L. Rep. 1 Cal. 303.

—— General—Construction of Will.

See **Will. 7.**

DWARKANATH *v.* BURRODA...I. L. Rep. 4 Cal. 443.

RESIDUARY ESTATE—Executors when entitled to—in Absence of Express Devise.

See **Will. 1.**

TREEPOORA SOONDERY *v.* DEBENDRONATH.....I. L. Rep. 2 Cal. 45.

RESIDUARY LEGATEE—Right of—claiming Share of Residue to open Scheme for Administration of Charity.

See **Will. 11.**

MAYOR OF LYONS *v.* ADVOCATE GENERAL OF BENGAL.....L. Rep. 3 I. A. 32; I. L. Rep. 1 Cal. 303.

RESIDUE—Gift of—to a Class—Postponement of Period of Distribution—Act X. of 1865, §§ 98, 101, 102.

See **Will. 4. 5.**

MASEYK *v.* FERGUSSON.....I. L. Rep. 4 Cal. 304, 670.

RESPONDENT—Right of—to Appeal against Judgment *Ex parte* in Lower Appellate Court.

See **Appeal—Civil. 6. 28.**

KALI KISHORE ROY *v.* DHUNUNJOY ROY.. I. L. Rep. 3 Cal. 228.

Ex p. MADALATHA.....I. L. Rep. 2 Mad. 75.

RESPONDENT'S OBJECTIONS TO DECREE APPEALED AGAINST.

See **Pauper Respondent.**

BABAJI *v.* BALLAL...I. L. Rep. 1 Bom. 75.

RESTITUTION OF CONJUGAL RIGHTS—Right of Mahomedan Wife to resist Suit for—until Payment of her Dower.

See **Mahomedan Law—Dower. 2.**

EIDAN *v.* MAZHAR HUSSAIN ... I. L. Rep. 1 All. 483.

1. —— *Cruelty — Hindus.*] In a suit between Hindus for the restitution of conjugal rights the only safe and practical criterion of cruelty, justifying the wife's refusal to live with her husband, is that contained in the definition which guides the English Courts, namely, that there must be actual violence of such a character as to endanger personal health or safety; or there must be reasonable apprehension of it. An unfounded charge of unchastity, therefore, made by the husband against his wife, and persisted in, is of itself not sufficient to constitute legal cruelty. Every person who receives a married woman into his house, and suffers her to continue there after he has received notice from the husband not to harbour her, is liable to an action for damages, unless the husband has, by his cruelty or misconduct, forfeited his marital rights, or has turned his wife out of doors, or has, by some insult or ill-treatment, compelled her to leave him.

Semble, obedience to the order of a Court directing the wife to return to cohabitation would be enforceable, under § 200 of Act VIII. of 1859 by imprisonment, or attachment of property or both. YAMUNABAI *v.* NARRAYAN MORESHVAR PENDSE. *Melvill* and *West*, JJ ... I. L. Rep. 1 Bom. 164, 1876.

See AJNASI KUAR *v.* SURAJ PRASAD... I. L. Rep. 1 All. 501.

Under **Civil Procedure Code, Act VIII. of 1859, § 200.**

2. —— *Form of Decree.*] In a suit by a Mahomedan husband against his wife for restitution of conjugal rights, the Court of first instance had decreed that the husband should get possession of the person of his wife :—*Held,* that the form of the decree was erroneous and must be amended. The decree should simply declare that the plaintiff was entitled to the

Digitized by Google

RESTITUTION OF CONJUGAL RIGHTS—*contd.*

restitution of conjugal rights, and that the defendant be directed to go to her husband's house. FURZAND HOSSEIN *v.* JANU BIBEE. *Mitter* and *Maclean*, JJ..... **I. L. Rep. 4. Cal. 588, 1878.**

S. C. under **Mahomedan Law—Divorce. 2.**

RESTORATION OF PROPERTY ALLEGED TO BE STOLEN—Order for.

See **Criminal Procedure Code, Act X. of 1872, §§ 415-419.**

In re ANPURNABAI...**I. L. Rep. 1 Bom. 630.**

RESTORATION OF STOLEN PROPERTY—Appeal from Order for.

See **Government Currency Note.**

EMPRESS *v.* JAGESSUR MOCHI... **I. L. Rep. 3 Cal. 379.**

RESTRAINT ON PARTITION, CONDITION IN.

See **Hindu Law—Will. 1.**

RESTRAINT OF TRADE—Agreement in.

See **Contract. 17. 17a.**

RESULTING TRUST—Hindu Executor—Void Bequest—Suit by Heir.

See **Limitation. 38.**

KHERODEMONEY *v.* DOORGAMONEY...**I. L. Rep. 4 Cal. 455.**

RESUMPTION—Of Grant in lieu of Maintenance—Limitation.

See **Limitation. 8.**

PETAMBER BABOO *v.* NILMONY SINGH...**I. L. Rep. 3 Cal. 793.**

—— Of Invalid *Lakhiraj* Lands—Suit for—*Onus Probandi.*

See **Onus Probandi. 3.**

ARFUNNESSA *v.* PEARY MOHUN. **I. L. Rep. 1 Cal. 378.**

—— Of Rent-free Service Lands.

See **Resumption. 2.**

See **Ghatwali Tenure.**

LEELANUND SINGH *v.* THAKOOR MUNRUNJUN...**I. L. Rep. 3 Cal. 251.**

RESUMPTION—*contd.*

1. —— *Of Grant in* Krishnarpan — *Reg. XIX. of* 1793, § 10—*Reg. XLI. of* 1795, § 10—*Act XVIII. of* 1873, §§ 30, 35, *Act XIX. of* 1873, §§ 79, 241.] The plaintiff claimed the possession of certain lands in virtue of a grant thereof to him in *Krishnarpan*, not merely of the proprietary right in such lands, but of the whole yield or rent of the same, undiminished by the payment of the revenue assessed thereon, which the grantor undertook to pay :—

Held, by *Stuart*, C.J., *Pearson* and *Oldfield*, JJ.—The grant was null and void and liable to resumption with reference to § 10 of Reg. XIX. of 1793 and XLI. of 1795, and § 30 of Act XVIII. of 1873 and § 79 of Act XIX. of 1873.

By *Spankie*, J. — That the question whether the grant was null and void with reference to those Regulations and Acts did not arise, as the grant, on the facts found by the Court below, was not one within the terms of those Regulations.

By *Stuart*, C.J., *Pearson* and *Spankie*, JJ.—That the suit was cognizable by the Civil Courts. JAGAN NATH PANDAY *v.* PRAG SINGH.....**I. L. Rep. 2 All. 545, 1879.**

2. —— *Right to Resume Service Lands—Rent-free Land—Right to levy Assessment—Limitation.*] The Talukdari Settlement Officer having assessed rent-free land on the ground that it had been granted for service, and that service was no longer required :—

Held, that this was not a sufficient defence to an action by the holder of the land, to recover the amount paid of the rent that had been imposed, and to cancel the order imposing it, for—

1st, if the grant were the grant of an estate burdened with service, there was no evidence that it was of such a nature, or so expressed, as to make the continuance of the tenure dependent on the continuance of service.

2ndly, if the grant were the grant of an office, the performance of whose duties was remunerated by the use of the land, the right to resume or assess the lands was barred by limitation; for, the original grantee having died in 1853, when at all events, if not before, the right of resumption accrued; and the plaintiffs, and those through whom they claimed, having had undisturbed possession for forty years, that possession, at all events from the time of the death of the original grantee in 1853, must be regarded as adverse to the talukdar, whose

Digitized by Google

RESUMPTION—*contd.*

right to resume or assess was consequently barred by Act IX. of 1872, § 29, and Sched. II., Art. 130. KEVAL KUBER *v.* THE TALUKDARI SETTLEMENT OFFICER. *Melvill* and *Kemball*, JJ.....**I. L. Rep. 1 Bom. 586, 1877.**

RESUMPTION OF TALUK ON DEATH BEFORE THE LETTER OF 10th OCTOBER 1859, OF TALUKDAR WITH WHOM SUMMARY SETTLEMENT HAD BEEN EFFECTED.

See **Act I. of 1869. 3.**

RANEE OF CHILLAREE *v.* THE GOVERNMENT OF INDIA.....**L. Rep. 4 I. A. 208.**

RETAINING IN BRITISH TERRITORY PROPERTY STOLEN IN DACOITY COMMITTED IN FOREIGN TERRITORY.

See **Criminal Procedure Code, Act X. of 1872, § 67. 1.**

REG. *v.* LAKHYA.....**I. L. Rep. 1 Bom. 50.**

RETROSPECTIVE OPERATION OF LEGISLATIVE ENACTMENTS.

See **Civil Procedure Code, Act X. of 1877, § 342.**

RATTANSI KALLIANJI...**I. L. Rep. 2 Bom. 148.**

See **Bombay Act V. of 1862. 1.**

RANCHODAS *v.* RANCHODAS...**I. L. Rep. 1 Bom. 581.**

RETURN—Widow's Right to the.

See **Mahomedan Law—Inheritance—Return.**

MAHOMED ARSHAD *v.* SAJIDA BANOO.....**I. L. Rep. 3 Cal. 702.**

RETURN OF MEMORANDUM OF APPEAL FOR AMENDMENT—No Time fixed for Amendment—Amended Memorandum presented after Expiration of Time for Appeal.

See **Appeal—Civil. 14.**

JAGAN NATH *v.* LALMAN...**I. L. Rep. 1 All. 260.**

RETURN OF PLAINT — Appeal from Order for—made after Admission of Suit.

See **Appeal—Civil. 26.**

KALIAN DAS. *v.* NAWAL SINGH... **I. L. Rep. 1 All. 620.**

—— Appeal from Order for—after Issues framed.

See **Appeal—Civil. 25.**

ABDUL SAMAD *v.* RAJENDRO KISHOR SINGH...**I. L. Rep. 2 All. 357.**

—— *Want of Jurisdiction.*] Where the Appellate Court decides that the lower Court had no jurisdiction to entertain the suit, it should return the plaint to the plaintiff in order that it may be presented before the proper Court. BAI MAHKOR *v.* BULAKHI CHAKU. *Kemball* and *N. Haridas*. JJ.....**I. L. Rep. 1 Bom. 538, 1874.**

RETURN TO WRIT OF HABEAS CORPUS — Power of High Court on — to inquire into Validity of Commitment by Small Cause Court—Affidavits—Delay—Terms.

See **Privilege from Arrest.**

See **Small Cause Court—Presidency Town. 5.**

In the matter of OMRITOLALL DEY. **I. L. Rep. 1 Cal. 78.**

REVENUE—Claims arising out of or connected with the Collection of.

See **Act XIX. of 1873, § 241.**

RAM DIAL *v.* GULAB SINGH...**I. L. Rep. 1 All. 26.**

—— Jurisdiction of High Court in Matters relating to.

See **Jurisdiction. 13.**

COLLECTOR OF SEA CUSTOMS, MADRAS, *v.* PUNNIAR CHITHAMBARAM ..**I. L. Rep. 1 Mad. 89.**

—— Matters concerning.

See **Right to Sue. 7.**

NOBIN CHUNDER DEY *v.* THE SECRETARY OF STATE FOR INDIA...**I. L. Rep. 1 Cal. 11.**

—— Payment of — by Pattidar on Co-Sharers' Shares—Suit for Contribution.

See **Act XIX. of 1873, § 241.**

RAM DIAL *v.* GULAB SINGH...**I. L. Rep. 1 All. 26.**

Digitized by Google

REVENUE—*contd.*

—— Remission of—on Revenue-paying Lands does not alter their Nature as Revenue paying Lands.

See **Sale in Execution of Decree. 8.**

SHOWERS *v.* SETH GOBIND DASS... **I. L. Rep. 1 All. 400.**

REVENUE ASSESSMENT — Agreement between Vendor and Purchaser as to payment of.

See **Vendor and Purchaser. 2.**

HIRA LAL *v.* GANESH PRASAD...**I. L. Rep. 2 All. 415.**

REVENUE AUTHORITIES — Partition by.

See **Butwara.**

BEMOOLASOONDERY *v.* PUNCHANUN...**I. L. Rep. 3 Cal. 705.**

See **Mortgage. 9.**

BYJNATH LALL *v.* RAMOODEEN... **L. Rep. 1 I. A. 106.**

See **Partition by the Revenue Authorities.**

SHARAT CHUNDER *v.* HURGOBINDO...**I. L. Rep. 4 Cal. 510.**

REVENUE COURT—Is Civil Court for purposes of Sanction to Prosecute.

See **Sanction to Prosecute. 3.**

EMPRESS *v.* SABSUKH...**I. L. Rep 2 All. 533.**

REVENUE COURTS — JURISDICTION OF.

See **Act XVIII. of 1873, § 95.**

KALIAN DAS *v.* TIKA RAM...**I. L. Rep. 2 All 137.**

—— Act X. of 1859, §§ 23, 24—Civil Courts' Jurisdiction when excluded.

See **Jurisdiction. 2.**

KUMOOD NARAIN *v.* PURNA CHUNDER...**I. L. Rep. 4 Cal. 547.**

—— To decide Questions of Title—Act XVIII. of 1873, § 95.

See **Res Judicata. 15.**

SHIMBHU NARAIN SINGH *v.* BACHCHA.....**I. L. Rep. 2 All. 200.**

REVENUE COURTS—JURISDICTION OF—*contd.*

—— Claim arising out of or connected with Collection of Revenue.

See **Act XIX. of 1873, § 241.**

RAM DIAL *v.* GULAB SINGH...**I. L. Rep. 1 All. 26.**

—— Suit by Co-Sharer against Heir of Deceased Lambardar for Share of Profits collected by Deceased.

See **Act XVIII. of 1873, § 93. 2.**

BHIKHAN KHAN *v.* RATAN KUAR... **I. L. Rep. 1 All. 512.**

—— Suit by Landlord against his Dewan comprising Items of Claim cognizable by Civil Court.

See **Jurisdiction. 2.**

KUMOOD *v.* PURNA...**I. L. Rep. 4 Cal. 547.**

—— Suit by Lessee of Occupancy Tenant ejected by Landholder.

See **Act XVIII. of 1873, § 95. 1.**

KALIAN DAS *v.* TIKA RAM...**I. L. Rep. 2 All. 137.**

—— In Suits for Money Equivalent of Arrears of Grain Rent.

See **Act XVIII. of 1873, § 93. 1.**

TAJUDDIN KHAN *v.* RAM PARSHAD BHAGAT...**I. L. Rep. 1 All. 217.**

—— Wrongful Dispossession of Lessee by Lessor.

See **Act XVIII. of 1873, § 95, Cl. m.**

ABDUL AZIZ *v.* WALI KHAN ..**I. L. Rep. 1 All. 333.**

REVENUE COURT—POWER OF — To award Interest in Suit for Profits.

See **Act XVIII. of 1873, § 93. Cl. h.**

TOTA RAM *v.* SHER SINGH...**I. L. Rep. 1 All. 261.**

REVENUE COURT—SUBORDINATION OF, TO HIGH COURT AT ALLAHABAD.

See **Sanction to Prosecute. 3.**

EMPRESS *v.* SABSUKH...**I. L. Rep. 2 All. 533.**

Digitized by Google

REVENUE-PAYING LANDS—Remission of Revenue for Term of Years on—does not alter their Character as.

See **Sale in Execution of Decree. 8.**

SHOWERS *v.* SETH GOBIND DASS. **I. L. Rep. 1 All. 400.**

REVENUE SALE.

See **Sale for Arrears of Revenue.**

REVENUE SALE LAW.

See **Act XI. of 1859.**

REVENUE SALE FOR DEFAULT OF PAYMENT OF GOVERNMENT REVENUE—Suit for Damages caused by—by One of Several Joint Owners of Undivided Property.

See **Damages. 1.**

LALLAH RAMESSHUR *v.* LALLAH BISSEN...**I. L. Rep. 1 Cal. 406.**

REVENUE SALE SET ASIDE AFTER JUDGMENT-DEBTOR'S INTEREST IN SURPLUS PROCEEDS HAS BEEN SOLD IN EXECUTION.

See **Sale in Execution of Decree. 17.**

RAM THUL *v.* BISESWAR LALL... **I. L. Rep. 2 I. A. 131.**

REVENUE SURVEY REGISTERS—Entry of Names of Khot's Tenants in—as Occupants

See **Entry of Names of Khot's Tenants in the Revenue Survey Registers as Occupants.**

D. R. BAM *v.* THE SURVEY COMMISSIONER of RATNAGIRI...**I. L. Rep. 3 Bom. 134.**

REVERSAL OF DECREE— After Sale in Execution but before Confirmation.

See **Sale in Execution of Decree. 21.**

BASAPA *v.* DUNDAYA...**I. L. Rep. 2 Bom. 540.**

REVERSAL OF SALE OF LANDS SOLD IN EXECUTION OF DECREE, EFFECT OF.

See **Limitation. 73.**

ISSUREE DASEE *v.* ABDOOL KHALAK...**I. L. Rep. 4 Cal. 415.**

REVERSIONARY HEIR — Limitation against—before Act XIV. of 1859.

See **Limitation. 18.**

AUMRITOLAL BOSE *v.* RAJONEEKANT MITTER ..**L. Rep. 2 I. A. 113.**

REVERSIONER — Right of — (Deceased Daughter's Son) to set aside Alienation of Ancestral Property by Maternal Aunt.

See **Hindu Law — Inheritance — Daughter's Sons.**

BAIJNATH *v.* MAHABIR .. **I. L. Rep. 1 All. 608.**

—— Right of—on Hindu Widow's divesting herself of her Interest in her Husband's Estate.

See **Hindu Law — Forfeiture of Widow's Estate.**

PRAG DAS *v.* HARI KISHEN...**I. L. Rep. 1 All. 503.**

—— Suit by.

See **Suit by Reversioner.**

GAURI DAT *v.* GUR SAHAI...**I. L. Rep. 2 All. 41.**

—— Suit by—during Lifetime of Widow in Possession, for Declaration of Title, and to restrain Waste—Consequential Relief.

See **Declaratory Decree. 2.**

KATHAMA NATCHIA *v.* DORASINGA TEVER...**L. Rep. 2 I. A. 169 ; 15 Beng. L. Rep. 83**

—— Suit by—for Declaratory Decree.

See **Declaratory Decree. 7.**

MUSAMAT JAGESRI *v.* RAM NATH. **I. L. Rep. 1 All. 371.**

—— Suit by—Hindu Widow, to set aside Adoption by Daughter-in Law.

See **Right to Sue. 8.**

JAMOONA DASSYA *v.* BAMASOONDERAI DASSYA...**L. Rep. 3 I. A. 72 ; I. L. Rep. 1 Cal. 289.**

—— Suit by—to Set Aside Alienation by Hindu Widow—Terms.

See **Hindu Law—Will. 5.**

MAHOMED SHAMSOOL *v.* SHEWUKRAM.....**L. Rep. 2 I. A. 7.**

Digitized by Google

REVERSIONERS WHEN BOUND BY DECREE OBTAINED AGAINST WIDOW.

See **Res Judicata. 16. 25.**

BRAMMOYE DASSEE *v.* KRISTO MOHUN...**I. L. Rep. 2 Cal. 222.**

NAND KUMAR *v.* RADHA KUARI... **I. L. Rep. 1 All. 282.**

REVIEW—Abandonment of Ground of Appeal.

See **Review. 11.**

—— Absence of Formal Finding on Issue determined.

See **Review. 11.**

—— Act XXVII. of 1860.

See **Appeal—Civil. 16.**

RUKMIN...**I. L. Rep. 1 All. 287.**

—— Admitted after Time allowed.

See **Review. 7. 10.**

—— Finality of Order admitting.

See **Review. 2.**

—— Order of Division Court to Magistrate to inquire into Case—Sentence—Reference for Confirmation—Power and Duty of High Court to consider the Jurisdiction of Sentencing Court.

See **Criminal Procedure Code, Act X. of 1872, § 297. 7.**

EMPRESS *v.* SARMUKH SINGH...**I. L. Rep. 2 All. 218.**

—— Refusal to register.

See **Practice—Privy Council. 8.**

MEER REASUT HOOSEIN *v.* HADJEE ABDOOLLAH...**L. Rep. 1 I. A. 72.**

See S. C. **L. Rep. 3 I. A. 221; I. L. Rep. 2 Cal. 131.**

Under **Review. 8.**

1. —— *Grounds on which Review may be admitted.*] A review may be admitted on any ground, whether urged at the original hearing of the appeal or not, whenever the Court considers that it is necessary to correct an evident error or omission, or is otherwise requisite for the ends of justice. *Chintaman Pal* v. *Pyari Mohun Mookerji* (6 Beng. L. Rep. 126) followed. KALU BHIVAJI *v.* VISHRAM MAVAJI. *Pinhey*, J...**I. L. Rep. 1 Bom. 543, 1876.**

2. —— *Act VIII. of* 1859, §§ 376, 378—*Power of Judge to review Judgment of his Predecessor—Finality of Order admitting Review.*] A Judge has no power to review the decision of his predecessor merely on the ground that, having gone into the case in all its details, he came to a different conclusion on the facts from that at which his predecessor arrived.

The law, though providing for a review of Judgment in certain special cases, does not, under colour of a review, authorize re-hearing for the purpose merely of seeing whether the Judge, on going through the case again, will arrive at a different conclusion. A review cannot be given merely to allow the parties to re-argue the case on the evidence on the chance of eventually throwing doubts on the soundness of the decision already passed. Sections 376 and 378 of Act VIII. of 1859 show that the intention of the Legislature was that a review should be granted only on the discovery of new evidence, or for the correction of some patent error—whether of law or fact—into which a Judge may have fallen, or omission, or for some such cause.

The general words used in those two sections are controlled and restricted by the particular words; and it is only the discovery of new evidence which was not within the knowledge of the party applying for the review, or which could not be adduced by him at the time when such decree was passed, or the correction of an evident, *i.e.*, patent and indubitable error or omission, or some other particular ground of the like description, which justifies the granting a review.

Where a review has been granted without any legal ground being shown for doing so, the order admitting the review is not final, but may be questioned in special appeal. ROY MEGHRAJ *v.* BEEJOY GOBIND BURRAL. *Macpherson*, C.J., (Offg.), and *Birch*, J.....**I. L. Rep. 1 Cal. 187, 1875.**

3. —— *Act VIII. of* 1859, § 376—*Error in Law.*] A Judge has no more right to review his own decision without sufficient reason than that of his predecessors. The production of an authority to which the attention of the Judge was not called at the first trial, and which is opposed to his decision, is no ground for granting a review of it. The parties ought to come prepared with all their materials, both of law and fact, at the first hearing, and if they do not come properly prepared, they ought not to be allowed, on discovering that they had omitted to bring forward some decided case, to try the case over again on the strength of their own omission. If

Digitized by Google

REVIEW—*contd.*

the Judge has decided improperly on a point of law, that would be matter for appeal, not for review. ELLEM *v.* BASHEER. *Garth*, C.J., and *Birch*, J.....**I. L. Rep. 1 Cal. 184, 1875.**

4. —— *Act XXVII. of* 1860.] A review of judgment is admissible in proceedings under Act XXVII. of 1860, though no express provisions for review are contained in the Act. *Siva* v. *Chenama* (5 Mad. H. C. Rep. 417) not followed. *Hameeda Beebee* v. *Noor Beebee* (9 W. Rep. 394) followed. *In the matter of the Petition of* POONA KOOER. *Glover* and *Mitter*, JJ...**I. L. Rep. 1 Cal. 101, 1875.**

5. —— *Act VIII. of* 1859, §§ 376 *to* 378.] Where a Judge has, in deciding a case, omitted to consider the effect of important documentary evidence filed with the plaint which was not taken issue upon, and which materially affects the merits of the case, he is competent, under Sections 376 to 378 of Act VIII. of 1859, to grant a review and re-hear the case. MAHADEVA RAYAR *v.* SAPPANI. *Innes* and *Kernan*, JJ.....**I. L. Rep. 1 Mad. 396, 1878.**

6. —— *Act VIII. of* 1859, §§ 376-378.] Where a Judge allowed a review of the judgment of his predecessor on the sole ground that it appeared to him that that judgment had done injustice:—*Held*, that though the extreme generality of the terms used in the sections of the Civil Procedure Code (Act VIII. of 1859) relat to the review of judgment, *viz.*, "other good and sufficient reason" (§ 376), and "otherwise requisite for the ends of justice" (§ 378), conferred a wide jurisdiction, this jurisdiction was not unlimited, and could not be held to authorize a Judge to review and reverse his predecessor's decree on the ground above mentioned. If a review is asked for in reference to the conclusions of fact drawn from the evidence, it should not be granted simply on the same evidence. *Reasut Hoossein* v. *Hadjee Abdoolla* (I. L. Rep. 2 Cal. 131) discussed. RAMAN *v.* KARUNATHA THARAKAN. *Morgan*, C.J., and *Innes*, J...**I. L. Rep. 2 Mad. 10, 1878.**

7. —— *Act VIII. of* 1859, §§ 376, 377—*Admission of Review after Ninety Days.*] An order of a Civil Court admitting a review of judgment after the expiration of ninety days from the date of its decree, without stating that there was, or that it had been shown to its satisfaction that there was sufficient cause or excuse for the delay, was *held* to have been improperly granted, and was set aside, together with all subsequent proceedings in the cause. LUCHMAN SINGH *v.* SHUMSHERE SINGH.....**L. Rep. 2 I. A. 58; 14 Beng. L. R. 373, 1874.**

8. —— *Registration Act VIII. of* 1871—*Refusal to compel Registration — District Court —Review—Act VIII. of* 1859, §§ 376 *and* 378—*Act XXIII. of* 1861, § 38.] On the 5th of January 1872, the appellant presented at the Registrar's Office at *Gya* a certain deed of gift for registration. The respondents, the heirs-at-law of the alleged donor, who was dead at the time of the application for registration, on being cited, came in and denied the execution of the deed; and registration was accordingly refused.

The appellant then applied, under § 76 of Act VIII. of 1871, to the Zillah Judge of Gya, for an order to the Registrar to register the deed. The application was rejected. Within ninety days after such rejection the appellant applied to the Judge who had succeeded the Judge who rejected his application, for a review of his predecessor's order. The application in terms purported to be made under §§ 376 and 378 of Act VIII. of 1859, and was granted. After the order admitting the review, but before the case was re-heard in pursuance of it, the High Court of Calcutta, in the exercise of its extraordinary jurisdiction, set aside the order admitting the review, as having been made *ultra vires* :—

Held, on appeal, that this order must be reversed. Section 38 of Act XXIII. of 1861 expressly makes applicable to a proceeding to compel registration under the Registration Act the whole procedure of Act VIII. of 1859, including the power of admitting a review. Even if the application for review contained no distinct allegation of an error of law, or any suggestion of the discovery of new evidence, yet looking to the extreme generality of the terms used in §§ 376 and 378, particularly to the terms "other good and sufficient reason," and "necessary to correct an evident error or omission, or is otherwise requisite for the ends of justice," it does not follow that there is absolute defect of jurisdiction whenever the parties have failed to show that there was either positive error in law, or new evidence to be brought forward which could not be brought forward on the first hearing. On an appeal, where an appeal lies, it

Digitized by Google

REVIEW—*contd.*

may be open to the Court of Appeal to say that the Judge ought not to have admitted a review; but that is quite a different thing from ruling that he has acted wholly without jurisdiction. In the first case the Appellate Court reverses the order, because the Judge has erred in the mode in which he has exercised a judicial discretion; in the latter case it quashes the order, because there was no discretion at all to be exercised.

The District Courts mentioned in Act VIII. of 1871 (except where the High Court is said to be, when exercising its local jurisdiction, a District Court within the meaning of the Act) must be taken to be the Courts exercising the ordinary civil jurisdiction within that district; and therefore in the case of a regulation province, to import the ordinary Zillah Courts. REASUT HOSSEIN *v.* HADJI ABDOOLLAH.....**L. Rep. 3 I. A. 221, 1876; I. L. Rep. 2 Cal. 131.**

9. —— *Act VIII. of* 1859, §§ 376, 378—*Appeal.*] Although an order on an application for review of judgment is final, yet in appeal against the decision passed on review the objection may be taken that the review was improperly granted.

An application for a review of judgment was made to a Court of Appeal on the ground that certain very material documents on which the Court of first instance had relied had been summarily discredited without being inspected by the Court of Appeal, and that the Court of Appeal had erred in declaring the report of a Commissioner, appointed by the Court of first instance for the purpose of making a local inquiry, to be unworthy of reliance, because he was a *Muharir* of the Court of first instance:—

Held, that in granting the review applied for, the lower Appellate Court had not exceeded the discretion vested in it by law. ABDUL RAHIM *v.* RACHA RAI. *Stuart*, C.J., and *Pearson*, J...**I. L. Rep. 1 All. 363, 1877.**

10. —— *Act VIII. of* 1859, § 327—*Admission of Review after Time—Just and Reasonable Cause.*] On the 8rd November 1875, the plaintiff applied for a review of a judgment dated the 23rd August 1873, passed in a suit brought by him against a minor upon a bond executed by the minor's mother as his guardian, whereby the Judge refused to pass a decree against the minor or his property, on the

REVIEW—*contd.*

ground that his mother had no power to borrow money on his behalf, or alienate his property, without the permission of the District Court, which had granted her a certificate of administration under Act XL. of 1858 in respect of her minor son's property.

The grounds for the application for a review were, that the minor's mother had not been granted a certificate under Act XL. of 1858, as the Judge supposed, but under Act XXVII. of 1860, and that, according to a decree of the High Court, dated 13th August 1875, the minor's mother was competent, under these circumstances, to bind her minor son, without the sanction of the District Judge; and the application for review alleged that it was made "with reference to evidence which could not be adduced when the case was decided, nor within the period allowed by law," —the evidence being the judgment of the High Court of the 13th August 1875:—

Held, that the judgment was not, properly speaking, evidence at all. It was merely authority in support of a contention which should have been urged when the case was first heard.

The Court did not say that the grounds set out in the application for review were not good grounds for granting a review, nor could they be called in question. But however good they were, the application could not be granted unless just and reasonable cause were shown to the satisfaction of the Court for not having preferred it within the time allowed by law, and in this case no such just and reasonable cause had been shown. The reference to the High Court's judgment was a mere blind. The argument to which that judgment gave countenance, and the other arguments and statements contained in the application, might have been adduced within the proper time, and the lower Court, therefore, was not warranted in admitting the review. MADHO DAS *v.* RUKMAN SEVAH SINGH. *Pearson* and *Oldfield*, JJ...**I. L. Rep. 2 All. 287, 1879.**

11. —— *Absence of Formal Finding on Issue determined—Abandonment of Ground of Appeal.*] The absence of a formal finding on an issue tried and decided by a High Court of first instance, is not an error calling for a review of judgment in the High Court. A party who not only had an opportunity of raising a question, but who did raise it, in appeal, and on argument abandoned it, cannot, under ordinary circumstances, be allowed to agitate the question on review.

Digitized by Google

REVIEW—*contd.*

SABAPATHI *v.* SUBRAYA. *Kernan* and *M. Ayyar*, JJ.....**I. L. Rep. 2 Mad. 58, 1878.**

S. C. under **Act XX. of 1863.**

12. —— *After Appeal Brought—Effect of.*] Where after appeal brought, the Court below has passed a judgment in review in the same case, which has been sent up and notified to Her Majesty in Council, and put on record in the appeal case, it is open to the Judicial Committee to pass judgment on the appeal, without prejudice to the subsequent judgment which was passed on review. TOONDUN SINGH *v.* POKHNARAIN SINGH...**L. Rep. 1 I. A. 342, 1874.**

S. C. under **Act I. of 1845, § 21.**

REVISION—Acquittal—Power of High Court as Court of—to interfere with Acquittal.

See **Criminal Procedure Code, Act X. of 1872, § 297. 1. 3. 5. 6.**

HARDEO...**I. L. Rep. 1 All. 139.**

AUROKIAM...**I. L. Rep. 2 Mad. 38.**

EMPRESS *v* MIYAJI.....**I. L. Rep. 3 Bom. 150.**

EMPRESS *v.* DWARKANATH...**I. L. Rep. 2 Cal. 399.**

—— Acquittal without asking Assesors' Opinion no Ground for.

See **Assessors.**

NARAIN DAS...**I. L. Rep. 1 All. 610.**

—— Of Acquittal—Right of Private Prosecutor to apply for.

NARAIN DAS... **I. L. Rep. 1 All. 610.**

See **Criminal Procedure Code, Act X. of 1872, § 297. 1. 3. 9.**

HARDEO...**I. L. Rep. 1 All. 139.**

AUROKIAM.....**I. L. Rep 2 Mad. 38.**

And *see* SUKHO *v.* DURGA PRASAD... **I. L. Rep. 2 All. 448.**

REVISION—POWER OF HIGH COURT AS A COURT OF—To Consider the Case of a Convict who has not appealed, when dealing with Appeals of his Co-Accused.

See **Criminal Procedure Code, Act X. 1872, § 297. 8.**

EMPRESS *v.* MURLI...**I. L. Rep 2 All. 336.**

REVISION—POWER OF HIGH COURT AS A COURT OF—*contd.*

—— To Consider the Evidence.

See **Criminal Procedure, Code, Act X. of 1872, § 297. 1. 4. 8.**

HARDEO...**I. L. Rep. 1 All. 139.**

EMPRESS *v.* DONNELLY...**I. L. Rep. 2 Cal. 405.**

EMPRESS *v.* MURLI...**I. L. Rep. 2 All. 336.**

—— To Interfere with Magistrate's Discretion as to Amount of Security to keep the Peace.

See **Criminal Procedure Code, Act X. of 1872, §§ 294 and 297.**

JUGGUT CHUNDER.....**I. L. Rep. 2 Cal. 110.**

—— To Quash Committal by Sessions Judge.

See **Jurisdiction. 16a.**

EMPRESS *v.* LACHMAN SINGH...**I. L. Rep. 2 All. 398.**

—— To Set Aside Order of Magistrate ordering Detention of Persons Arrested after Acquittal, pending Appeal from Acquittal.

See **Criminal Procedure Code, Act X. of 1872, § 297. 2.**

REG. *v.* GHOLAM ISMAIL...**I. L. Rep. 1 All. 1.**

REVIVAL OF DEBT—Acknowledgment of Judgment Debt by Judgment Debtor.

See **Limitation. 43. 44.**

KALLY PROSONNO *v.* HEERA LAL... **I. L. Rep. 2 Cal. 468.**

MUNGOL PRASHAD *v.* SHAMA KANTO...**I. L. Rep. 4 Cal. 708.**

See **Kistbandi.**

HEERA LAL *v.* DHUNPUT SINGH... **I. L. Rep. 4 Cal. 500.**

—— Payment of Interest as such.

See **Limitation. 45. 46. 47.**

VALIA *v.* VIRA.....**I. L. Rep. 1 Mad. 228.**

TEGARAYA *v.* MARIAPPA.....**Ibid. 265.**

HANMANTLAL *v.* RAMABHAI **I. L. Rep. 3 Bom. 198.**

Digitized by Google

REVIVAL OF DEBT—*contd.*

—— Suit Barred by Act XIV. of 1859 not revived by its Repeal.

See **Hindu Law — Maintenance of Widow. 6.**

KRISHNA M. BOSE *v.* OKHILOMINI. **I. L. Rep. 3 Cal. 331.**

See **Limitation. 15. 16. 17.**

RAM CHUNDER *v.* JUGGUTMONMOHINEY...**I. L. Rep. 4 Cal. 283.**

NOCOOR CHUNDER *v.* KALLY COOMAR...**I. L. Rep. 1 Cal. 328.**

ABDUL KARIM *v.* MANJI...**I. L. Rep. 1 Bom. 295-305.**

REVIVAL OF PROSECUTION.

See **Compounding Offences. 5.**

REG. *v.* DEVAMA...**I. L. Rep. 1 Bom. 64.**

—— Discharge by Subordinate Magistrate — Course to be pursued by District Magistrate.

See **Criminal Procedure Code, Act X. of 1872, § 295. 1.**

DIJAHUR DUTT...**I. L. Rep. 4 Cal. 647.**

See **Criminal Procedure Code, Act X. of 1872, § 297. 1. 3. 5. 6.**

1. —— *Discharge of Accused Person—Act X. of* 1872, §§ 215, 295, 296, 297.] Where a Cantonment Magistrate discharged, under § 215 of Act X. of 1872, certain persons who were charged before him with causing hurt without hearing the whole of the evidence for the prosecution, and the District Magistrate, on an application to him by the complainant, directed the revival of the proceedings, and ordered the Joint Magistrate to proceed afresh with the case; such order was quashed, as being illegal and made without jurisdiction.

The case came before the District Magistrate under § 295 of Act X. of 1872, and his proper and only course was to proceed under § 296 to report the case for orders to the High Court, which, under § 297, might have ordered the accused persons to be tried, if of opinion that they had been improperly discharged. *In the matter of the Petition of* MOHESH MISTREE. *Markby* and *Morris*, JJ...**I. L. Rep. 1 Cal. 282, 1876.**

REVIVAL OF PROSECUTION—*contd.*

2. —— *Criminal Procedure Code, Act X. of* 1872, §§ 195, 295, 296—*Discharge of Accused—Jurisdiction—Fresh Evidence.*] A Deputy Magistrate having discharged, under § 195 of the Criminal Procedure Code (Act X. of 1872), a person accused of an offence triable by a Magistrate, but without examining a material witness, because she was reputed of weak intellect, the Magistrate of the District, on the application of the complainant, took the evidence of that witness, and committed the accused for trial before the Sessions Court.

Held, on reference to the High Court, that the words "Sessions case" in § 296 of the Criminal Procedure Code (Act X. of 1872) mean a case triable exclusively by the Court of Sessions, and therefore that the action of the Magistrate could not be supported under that section, but that the Deputy Magistrate's order, discharging the accused without examining a material witness on the ground above stated, being bad, under the rule laid down in *Empress* v. *Donnelly* (I. L. Rep. 2 Cal. 405-412), the District Magistrate was competent to revive the proceedings, further evidence being available, and the commitment was therefore sustainable. EMPRESS *v.* HARRY DAYAL KARMOKAR. *Markby* and *Prinsep*, JJ.....**I. L. Rep. 4 Cal. 16, 1878.**

3. —— *Act X. of* 1872, § 215—*Discharge of Accused.*] It is illegal and *ultra vires* on the part of a Magistrate to revive before himself criminal proceedings against an accused person who has been discharged under § 215 of Act X. of 1872, where no further evidence is procurable than that which was before the Court on the first occasion.

Per Markby, J.—When the discharge has been improper, the only proper course open to a Magistrate is to report the case to the High Court for orders, and the High Court will, if of opinion that the accused has been improperly discharged, order a re-trial. EMPRESS *v.* DONNELLY. *Markby* and *Prinsep*, JJ...**I. L. Rep. 2 Cal. 405, 1877.**

S. C. under **Evidence. 22**, and **Criminal Procedure Code, Act X. of 1872, § 297. 4.**

4. —— *Act X. of* 1872, §§ 44, 215, 296—*Discharge of Accused—Revival of Prosecution at Instance of Sessions Court—Commitment.*] Certain persons were charged under § 417 of the Penal Code, and were discharged by the Magistrate

Digitized by Google

REVIVAL OF PROSECUTION—*contd.*

under § 215 of the Criminal Procedure Code, Act X. of 1872. The Court of Sessions, considering that the accused had been improperly discharged, forwarded the record to the Magistrate of the District, suggesting to him to make over the case to a Subordinate Magistrate, with directions to inquire into any offence other than the offence in respect of which the accused persons had been discharged, which the evidence on the record showed to have been committed. The Subordinate Magistrate, to whom the case was made over, made an inquiry and committed the accused for trial before the Sessions Court on charges under §§ 363 and 420 of the Penal Code. It was contended that the commitment was illegal, having been made in consequence of the remarks of the Sessions Judge on the record of the discharge of the accused, which amounted to a "direction to commit" under § 296 of the Criminal Procedure Code; and that, the case not being a Sessions case, the Judge had no jurisdiction to make such order:—

Held, that the order of the Sessions Judge was not a "direction to commit" in the sense of § 296 of the Criminal Procedure Code, *i.e.*, a direction to send the discharged accused at once to the Court of Session without further inquiry. Whether or not the investigation did or did not take place in consequence of the Sessions Judge's remarks was immaterial. The Magistrate of the District, on consideration of the facts appearing in the evidence, referred the case, under § 44 of the Criminal Procedure Code, to his subordinate, who had full power to hold the necessary inquiry, and if he considered the case one that ought to be tried by the Sessions Court, to commit the same. The inquiry into the charges under §§ 363 and 420 of the Penal Code were, therefore, rightly held, and the commitment could not be impeached. EMPRESS *v.* BHUP SINGH. *Straight*, J. .....**I. L. Rep. 2 All. 570, 1879.**

5. —— *Act X. of* 1872, § 142—*Discharge—Revival of Prosecution.*] § 142 of the Criminal Procedure Code (Act X. of 1872) does not empower the Magistrate of the District to call for the record of a case in which there has been a discharge by a Subordinate Magistrate under § 215 of that Code, and merely on the ground that he differs from the conclusion arrived at by the Subordinate Magistrate on the evidence to direct another Subordinate Magistrate to make a fresh inquiry into the case.

REVIVAL OF PROSECUTION—*contd.*

The Magistrate of the District cannot order a fresh inquiry in cases where there has been a discharge under § 215 by a Subordinate Magistrate in cases other than those specified in § 296, *i.e.*, in Sessions cases.

Where, therefore, the Magistrate of the District, professing to act under § 142 of the Criminal Procedure Code (Act X. of 1872), sent for the record of a case in which a person accused of an offence triable by a Magistrate had been discharged under § 215 by a First Class Magistrate, and referred the case for fresh inquiry to another First Class Magistrate, who convicted the accused:—

Held, that the District Magistrate had no power under § 142 to call for the proceedings, or to order the re-trial of the accused, but that he must be held to have acted under § 295, and that under that section the proper and only course for him, if he considered the order of discharge improper, was to refer the proceedings to the High Court; and the order of the Sessions Court, reversing the conviction by the Magistrate who re-tried the accused, was therefore upheld. IMPX. *v.* GOWDAPA VENKUGOWDA. *Melvill* and *Kemball*, JJ...**I. L. Rep. 2 Bom. 534, 1878.**

REVIVAL OF RIGHT OF APPEAL—*Compromise of Suit pending Appeal set aside on Ground of Fraud.*] Where a suit is compromised pending an appeal, and the compromise is afterwards set aside on the ground of fraud and collusion, the effect is to remit both parties to their original rights, and to revive the rights of appeal. RANEE KHUJUROONISSA *v.* MUSST. ROUSHUN JEHAN...**L. Rep. 3 I. A. 291; I. L. Rep. 2 Cal. 184.**

S. C. under **Mahomedan Law. 2.**

REVIVAL OF TIME-BARRED DECREE—Acknowledgment in Writing by Judgment Debtor—*Bonâ fide* Application.

See **Limitation. 43. 44.**

KALLY PROSONNO *v.* HEERA LALL. **I. L. Rep. 2 Cal. 468.**

MUNGOL PRASAD *v.* SHAMA KANTO...**I. L. Rep. 4 Cal. 708.**

See **Kistbandi.**

HEERA LALL *v.* DHUNPUT SINGH. **I. L. Rep. 4 Cal. 500.**

Digitized by Google

REVOCATION OF AUTHORITY OF ARBITRATORS.

See **Suit for Land. 3.**

KELLIE *v.* FRASER...**I. L. Rep. 2 Cal. 445.**

REVOCATION OF DIVORCE.

See **Mahomedan Law—Divorce.**

HAMID ALI *v.* IMTIZAN...**I. L. Rep. 2 All. 71.**

REVOCATION OF PROBATE.

See **Probate. 3.**

KOMOLLOCHUN NILRUTTUN...**I. L. Rep. 4 Cal. 360.**

REVOCATION OF WILL—Parol—by Hindus.

See **Act I. of 1869, § 22. Cl. 4.**

MAHARAJAH PERTAB SINGH *v.* MAHARANEE SUBHAO...**L. Rep. 4 I. A. 228 ; I. L. Rep. 3 Cal. 626.**

—— By Second Marriage of Jew in Lifetime of First Wife.

See **Indian Succession Act X. of 1865, § 56.**

GABRIEL *v.* MORDAKAI...**I. L. Rep. 1 Cal. 148.**

RIGHT OF ACCUSED TO RECALL AND CROSS-EXAMINE THE WITNESSES FOR PROSECUTION.

See **Practice—Criminal. 1.**

EMPRESS *v.* BALDEO SAHAI...**I. L. Rep. 2 All. 253.**

RIGHT OF ALIENATION—Talookdar's —Act I. of 1869.

See **Oudh Proclamation of 1858, para. 8. 1.**

HURPURSHAD *v.* SHEO DYAL...**L. Rep. 3 I. A. 259.**

RIGHT TO ASSESS RENT-FREE LANDS.

See **Resumption. 2.**

KEVAL *v.* TALUKDARI SETTLEMENT OFFICER...**I. L. Rep. 1 Bom. 586.**

RIGHT OF ASSIGNEE OF CO-SHARERS IN AN UNDIVIDED ESTATE.

See **Mortgage. 9.**

BYJNATH LALL *v.* RAMOODEEN CHOWDRY...**L. Rep. 1 I. A. 106 ; S. C. 21 W. Rep. 233.**

See **Partition by the Revenue Authorities.**

SHARAT CHANDAR *v.* HURGOBINDO. **I. L. Rep. 4 Cal. 510.**

RIGHTS OF ASSIGNEE OF MORTGAGEE.

See **Mortgage. 11.**

SAHAI PANDEY *v.* SHAM NARAIN. **I. L. Rep. 2 All. 142.**

RIGHT OF BANK TO REFUSE TO REGISTER TRANSFER OF SHARES.

See **Presidency Banks Act XI. of 1876, §§ 17. 21.**

MOTHOORMOHUN ROY *v.* BANK OF BENGAL...**I. L. Rep. 3 Cal. 390.**

RIGHT TO CARRY TABUTS ALONG A PUBLIC ROAD—Suit to establish.

See **Right to Sue. 1.**

SAKTU *v.* IBRAHIM...**I. L. Rep. 2 Bom. 547.**

RIGHT OF CHELA TO SUCCEED TO GURU.

See **Hindu Law—Inheritance—Saniasi.**

MADHO DÆS *v.* KAMTA DAS...**I. L. Rep. 1 All. 539.**

RIGHTS OF COMMON.

See **Inamdar. 2.**

VISHWANATH *v.* MAHADAJI...**I. L. Rep. 3 Bom. 147.**

RIGHT TO CONFIRM ELECTION OF MOHUNT.

See **Mohunt.**

RAJAH MUTTU RAMALINGA SETUPATI *v.* PERIANAYAGUM PILLAI.....**L. Rep. 1 I. A. 209.**

Digitized by Google

RIGHT OF CO-PARTNERS TO DISSOLVE PARTNERSHIP.

See **Compensation for Loss of Commission on Sales.**

COWASJI *v.* LALLUBHAI...**8 Bom. H. C. Rep. O. C. J. 209; I. L. Rep. 1 Bom. 463.**

RIGHT OF COUNSEL—To be heard on reference under § 296, Criminal Procedure Code.

See **Criminal Procedure Code, Act X of 1872, § 296**

REG. *v.* DEVAMA...**I. L. Rep. 1 Bom. 64.**

RIGHT OF CREDITORS OF DECEASED HINDU TO FOLLOW HIS ESTATE INTO THE HANDS OF A PURCHASER FROM THE HEIR OR DEVISEE.

See **Limitation. 38a.**

GREENDER CHUNDER GHOSE *v.* MACKINTOSH...**I. L. Rep. 4 Cal. 897.**

RIGHT OF CREDITORS OF ALLEGED HEIR OF TESTATOR TO OPPOSE GRANT OF PROBATE.

See **Probate, 6.**

DESPUTTY SINGH...**I. L. Rep. 2 Cal. 208.**

RIGHT OF CREDITOR TO APPLY FOR REVOCATION OF PROBATE.

See **Probate. 3.**

KOMOLLOCHUN DUTT *v.* NILRUTTUN MUNDLE...**I. L. Rep. 4 Cal. 360.**

RIGHT OF CREDITORS OF DECEASED MAHOMEDAN TO FOLLOW HIS ESTATE INTO THE HANDS OF A PURCHASER FROM THE HEIR.

See **Mahomedan Law—Right of Creditors to follow Estate of a Debtor into the hands of a Purchaser from the Heir.**

BAZAYET HOSSEIN *v.* DOOLI CHUND...**I. L. Rep. 4 Cal. 402; L. Rep. 5 I. A. 211.**

RIGHT OF CREDITORS AND DISSENTIENT SHAREHOLDERS OF COMPANY TRANSFERRING ASSETS TO NEW COMPANY.

See **Company—Winding up. 1.**

In re THE FLEMING S. & W. Co., LIMITED...**I. L. Rep. 3 Bom. 299.**

RIGHTS OF EXECUTORS, DEVISEES, AND LEGATEES.

See **Probate. 1.**

BEHARRY *v.* JUGGO...**I. L. Rep. 4 Cal. 1.**

RIGHT TO FISH IN A PUBLIC RIVER, INFRINGEMENT OF AN EXCLUSIVE.

See **Criminal Trespass. 3.**

EMPRESS *v.* CHARN NAYIAH...**I. L. Rep. 2 Cal. 354.**

RIGHT OF FISHERY IN PUBLIC NAVIGABLE RIVERS — Jalkar.] A private right of fishery in tidal navigable rivers must be derived from the Crown, if it exists at all, and must be established by very clear evidence indeed, and the presumption would be against any such private right.

Quære, whether such a right can be created.

A mere recital in the quinquennial papers which describe a person as owner of *jalkars* in a zemindary which was permanently settled with him by Government, is not sufficient to give a right of fishery in a public tidal navigable river. That word may be perfectly satisfied by applying it to the right to fish in enclosed waters, such as a *jheel*. PROSUNNO COOMAR SIRCAR *v.* RAM COOMAR PAROOEY. *Markby* and *Prinsep*, JJ.. **I. L. Rep. 4 Cal. 53, 1878.**

RIGHT OF FISHING IN THE SEA—*Fishing-Stakes.*] Whether or not the sea and its subjacent soil, within the territorial limits around British India, be vested in the Crown, in the absence of any appropriation thereof, or of the right of fishing in the former, by the Crown to any particular individuals, the right of the public to fish therein is common, and not the subject of property. Such rights may in certain portions of the sea be regulated by custom.

Quære, whether the Crown could grant a private fishery in such seas, or any part thereof.

Digitized by Google

RIGHT OF FISHING IN THE SEA —*contd.*

Members of the public exercising such common right of fishing in the sea are bound to do so in a fair and reasonable manner, and not so as to impede others from doing the same; and any conduct of one party to another which prevents the latter from a fair exercise of his equal right, and causes injury to him, is actionable. BABAN MAYACHA *v* NAGU SHRAVUCHA. *Westropp*, C.J. and *N. Harridas*, J.....**I. L. Rep. 2 Bom. 19, 1878.**

RIGHT TO THE FLOW OF WATER THROUGH AN ARTIFICIAL WATERCOURSE.

See **Artificial Watercourse.**

RAMESHUR PERSHAD *v.* KOONJ BEHARI...**L. Rep. 6 I. A. 33; L. Rep. App. Ca. 121; I. L. Rep. 4 Cal. 633.**

See **Easement. 4.**

MORGAN *v.* KIRBY...**I. L. Rep. 2 Mad. 46.**

RIGHT TO FREE PASTURAGE—*Bombay Act I. of* 1865, § 32—*Village Cattle.*] Plaintiff erected a hut on public ground in the village of Veluk, in the district of Thana, and lived there annually during the monsoon, while his cattle grazed on the public grazing-ground of the village. He was not the owner or lessee of any land in the village. On being prevented by the Collector of Thana from thus grazing his cattle, the plaintiff brought a suit against that officer for a declaration of his right to graze his cattle in the limits not only of that, but of any other village in the district of Thana.

Held, that the plaintiff was not entitled to any such right. The term "village cattle" in § 32 of Bombay Act I. of 1865 does not include the cattle of any or every roving grazier who may choose to squat for a few months on the public grounds of a village, and to allow his cattle to prey on lands set apart for the villagers. And the Act does not vest the right of sanctioning such a diversion of the village grazing-grounds in the villagers themselves, but in the Revenue Commissioner, whose consent must be obtained. THE COLLECTOR OF THANA *v.* BAL PATIL. *Westropp*, C. J., and *N. Harridas*, J... **I. L. Rep. 2 Bom. 110, 1877.**

RIGHT OF GOVERNMENT TO NOMINATE A SUCCESSOR TO AN IMPARTIBLE ZEMINDARY FOR WHICH NO PERMANENT SUNNUD HAS BEEN ISSUED.

See **Succession to Impartible Zemindary for which no Permanent Sunnud has been issued.**

SRI RAGHUNADA *v.* SRI BROZO KISHORO...**L. Rep. 3 I. A. 154.**

RIGHT TO GRAZE CATTLE ON PUBLIC GRAZING GROUND OF VILLAGE—Suit for Declaration of.

See **Right to Free Pasturage.**

COLLECTOR OF THANA *v.* BAL PATIL...**I. L. Rep. 2 Bom. 110.**

RIGHT OF HINDU FATHER TO CUSTODY OF INFANT DAUGHTER—Loss of Caste does not affect the.

See **Loss of Caste.**

KANAHI RAM *v.* BIDDYA RAM... **I. L. Rep. 1 All. 549.**

RIGHT OF HINDU WIDOW TO ENFORCE PARTITION.

See **Hindu Law—Partition. 3.**

SOUDAMONEY *v.* JOGESH CHUNDER. **I. L. Rep. 2 Cal. 262.**

RIGHT OF HINDU WIDOW TO PRE-EMPTION.

See **Pre-emption. 9.**

PHULMAN RAI *v.* DANI KUARI... **I. L. Rep. 1 All. 452.**

RIGHT OF HINDU WIDOW TO RESIDE IN FAMILY HOUSE.

See **Hindu Law—Widow's Right of Residence in Family House.**

GAURI *v.* CHANDRAMONI ..**I. L. Rep. 1 All. 262.**

RIGHT OF HINDU WIDOW TO SUE TO SET ASIDE AN ADOPTION BY HER DAUGHTER-IN-LAW.

See **Right to Sue. 8.**

JAMOONA DASSYA *v.* BAMASOONDERAI DASSYA... **L. Rep. 3 I. A. 72; I. L. Rep. 1 Cal. 289.**

Digitized by Google

RIGHT OF INAMDAR TO ENCLOSE LAND.

See **Inamdar. 2.**

VISHVANATH *v.* MAHADAJI... **I. L. Rep. 2 Bom. 147.**

RIGHT OF INAMDAR TO ENHANCE RENT.

See **Miras. 2.**

VISHNUBHAT *v.* BABAJI...**I. L. Rep. 3 Bom. 345, n.**

See **Enhancement of Rent. 5.**

PARSOTAM *v.* KALYAN RAYJI.....**I. L. Rep. 3 Bom. 348.**

RIGHT OF JUDGMENT-DEBTOR TO DISCHARGE FROM IMPRISONMENT.

See **Civil Procedure Code, Act X. of 1877, § 342.**

RATTANSI KALLIANJI...**I. L. Rep. 2 Bom. 148.**

RIGHT OF KARNAVAN TO REVOKE AUTHORITY TO ANANDRAVAN TO MANAGE TARWAD PROPERTY.

See **Malabar Law. 3.**

GOVINDAN *v.* LANNARAN... **I. L. Rep. 1 Mad. 351.**

RIGHT TO LEVY ASSESSMENT ON RENT-FREE LANDS.

See **Resumption. 2.**

KEVAL *v.* TALUKDAREE SETTLEMENT OFFICER...**I. L. Rep. 1 Bom. 586.**

See **Ghatwali Tenure.**

LEELANUND SINGH BAHADOOR *v.* THAKOOR MUNRUNJUN SINGH. **I. L. Rep. 3 Cal. 251.**

RIGHT OF MAHOMEDAN WIDOW TO THE RETURN.

See **Mahomedan Law—Inheritance—Return.**

MAHOMED ARSHAD CHOWDHRY *v.* SAJIDA BANOO...**I. L. Rep. 3 Cal. 702.**

RIGHT OF MANAGEMENT OF A PAGODA—ALIENATION OF.

See **Alienation of the Right of Management of a Pagoda.**

RAJAH KURMAH VALIA *v.* RAVI KURMAH MUTHA... **L. Rep. 4 I. A. 76.**

RIGHT OF MIRASDAR TO HOLD AT FIXED RENT.

See **Miras. 2.**

BABAJI *v.* NARAYAN...**I. L. Rep. 3 Bom. 340.**

VISHNUBHAT *v.* BABAJI.....**Ibid. 345, n.**

See **Enhancement of Rent. 5.**

PARSOTAM *v.* KALYAN RAYJI...**I. L. Rep. 3 Bom. 348.**

RIGHTS OF MIRASDARS—Patta—*Waste Lands— Landlord and Tenant — Occupancy—Proprietary Right—Yearly Tenant.*] The plaintiffs, village mirasdars, sued in 1873, to eject the defendants, in possession of the village waste lands, and to obtain a *patta* for the same. It appeared that several applications had been made on different occasions, beginning in 1859, by strangers for permission to cultivate the waste lands belonging to the village, and, on each occasion, the mirasdars, including the plaintiffs, intervened, and on promising to cultivate and pay *kist* themselves, got the applications of the strangers refused, and *pattas* were made out in the names of the *mirasdars* in 1860 and 1865-66 and 1866-67. They, however, neither cultivated nor paid *kist* for the lands, and subsequent to 1867 the lands were sold by auction for arrears of *kist*, and purchased by the plaintiffs. The Collector, however, refused to accept them as *patta*-holders, cancelled their *pattas*, and issued a fresh *patta* to the defendant, and made over the lands to him.

The Munsiff dismissed the suit, holding that the plaintiff's conduct was in fraud of the revenue, and that the revenue authorities were justified in acting as they had done. The District Judge, on appeal, reversed this decision on the authority of *Rajagopala Ayyanagar* v. *Collector of Chingleput* (7 Mad. H. C. Rep. 98).

The plaintiffs did not sue to recover *mirasi* rights or privileges, basing their suit on that title, but their complaint was that the *pattas* granted to them had been cancelled, and the lands unlawfully transferred to the defendants without the *rasinama* of the plaintiffs, and they relied on the former transactions between the revenue officials and themselves as creating in themselves and the other *mirasdars* a right of a permanent nature which could not be determined arbitrarily, and which still subsisted:—

Held by *Morgan*, C.J., and *Holloway*, J.—That the case of *Rajagopala Ayyangar* v. *Collector of Chingelput* (7 Mad. H. C. Rep. 98) was distin-

Digitized by Google

RIGHTS OF MIRASDARS—*contd.*

guishable from the present. In that case it was decided that the revenue authorities could not deprive the *mirasdar* of his land and grant it to another merely because the *mirasdar* omits for a time to cultivate and makes default in payment of the assessment. Government officers have not authority unreservedly to dispose of such lands. Both in the case of the *mirasdar* and of the hereditary ryot, the option of cultivating should be allowed to the "ancient occupant" before possession is given temporarily to a stranger.

In *Rajagopala Ayyangar* v. *Collector of Chingleput* (*ubi supra*), the *mirasdar* had been summarily ejected from his cultivated fields, which, as the facts were viewed, he had not relinquished, but only allowed to lie fallow. In the present case, when the lands were settled with the plaintiffs they still continued to be immemorial waste, for the settlement of which the Collector is authorized in the interests of the State to make engagements, and to dispose of such lands, under certain restrictions, to persons applying to cultivate them. The *mirasdars* have the prior right to the engagement, but they have no interests therein which can be said to be at their own disposal, otherwise than as incidental to their cultivated lands. Waste and uncultivated lands, such as were the subject of the present litigation, were, by Madras Regulations of 1802 and Madras Act VIII. of 1865, expressed to be at the landholder's disposal, and no occupancy rights arose as between landholder and ryot from the cultivation of such lands, nor simply from the grant of a *patta*, without reference to other circumstances evidencing the right.

In land belonging to the State the ordinary *pattadar* acquires *by the patta alone* no higher interest than he derives from a private proprietor whose land he undertakes to cultivate.

There was nothing in the engagements with the plaintiffs to indicate that any permanent right or interest in the land was intended to be created or conveyed, or was recognized as existing. The settlement with them was in form an annual settlement, and on the face of the transaction there was nothing that could be regarded as amounting to the creation or recognition of a permanent right in the plaintiffs, such as could be terminated only in the manner indicated by *Rajagopala Ayyangar* v. *Collector of Chingleput* (*ubi supra*). It was apparent that the plaintiffs had no intention to cultivate the land or (except on legal compulsion) to pay the assessment,

RIGHTS OF MIRASDARS—*contd.*

and therefore, under such circumstances, the revenue authorities were justified in the course they had pursued.

Per Holloway, J.—The lands were held from year to year, and as the tenants had the right of terminating the tenancy at the end of any Fasli, the landlords, the Government, had an equal right to do so. The *Darkhast* rules of the Revenue Board did not constitute rights enforceable at law. Even supposing that the plaintiffs had a right in 1869 to be admitted as tenants, and that they were wrongfully dispossessed, their only action would be against the Government for such wrongful dispossession, and the relief now sought was quite incommensurate with the injury.

Held by *Innes*, J.—That the plaintiffs being purchasers at a Government sale, the revenue authorities were bound by the express terms of the law to recognize them as the *patta*-holders, and to allow them to retain their holdings until evicted by due course of law for non-payment of revenue; they were occupiers of the land, and could not be ejected except for the reasons and by the process prescribed by Madras Act II. of 1864, and not having been lawfully ejected, they were still rightful holders, and twelve years not having elapsed since the date their ejectment could claim to be restored.

There is no sufficient ground for the assumption of any such relation as that of landlord and tenant between the ryot and Government, or of the rights of the ordinary ryot *pattadar* in the soil being limited to a tenancy from year to year. The tenancy of an ordinary *pattadar* entitles the holder to the right of occupancy so long as he pays what is due, and until after default he is evicted by the process provided by law. FAKIR MUHAMAD *v.* TIRUMALA CHARIAR.

I. L. Rep. 1 Mad. 205, 1876, F. B.

Note.—*Morgan*, C.J., says (p. 220) that the rule that ryots, so long as they continue to pay the Government revenue, could not be dispossessed, refers only to the old resident ryots who have an hereditary possession.

RIGHT OF MORTGAGEE PRIOR TO THE CONFISCATION OF OUDH ESTATES TO SUB-SETTLEMENT.

See **Act I. of 1869. 4.**

GOURI SHUNKUR *v.* MAHARAJAH OF BULRAMPORE...**L. Rep. 6 I. A. 1; I. L. Rep. 4 Cal 839.**

Digitized by Google

RIGHT OF MORTGAGEE TO PREVENT SALE OF MORTGAGED PROPERTY FOR ARREARS OF ZEMINDARI RENT.

See **Co-Sharers of Putni Taluk.**

MOHESH CHUNDER *v.* RAM PROSONO.....**I. L. Rep. 4 Cal. 539.**

RIGHT OF MORTGAGOR OF PROPRIETARY RIGHTS IN A MAHAL, ON SALE TO THE MORTGAGEES, TO HOLD SIR LANDS.

See **Act XVIII. of 1873, § 7.**

BAKHAT RAM *v.* WAZIR ALI...**I. L. Rep. 1 All. 448.**

RIGHT OF MORTGAGOR TO REDEEM BIRT TENURES WITHIN THE TALUK PURCHASED BY THE MORTGAGEE.

See **Mortgagee. 15.**

RAJAH KISHENDATT *v.* RAJAH MUMTAZ ALI...**L. Rep. 6 I. A. 145.**

RIGHT OF MOTHER TO SHARE ON PARTITION BETWEEN SONS AFTER FATHER'S DEATH.

See **Parties to Suit. 3.**

TORIT BHOOSUN *v.* TARAPROSONO. **I. L. Rep. 4 Cal. 756.**

See **Hindu Law—Partition. 4.**

JUGMOHUN *v.* SARADAMOYEE...**I. L. Rep. 3 Cal. 149.**

RIGHT OF OCCUPANCY — Extinguishment of.

See **Extinguishment of Right of Occupancy.**

—— Inheritance to.

See **Act XVIII. of 1873, § 9. 2.**

BHAGWANTI *v.* RUDR MAN TIWARI...**I. L. Rep. 2 All. 145.**

—— In *Jalkar.*

See infra. **6.**

See **Jalkar.**

JUGGOBUNDHOO *v.* PROMOTHONATH.....**I. L. Rep 4 Cal. 767.**

—— Of *Pattadar* Ryot.

See **Rights of Mirasdars.**

FAKIR MUHAMAD *v.* TIRUMALA CHARIAR.....**I. L. Rep. 1 Mad. 205.**

RIGHT OF OCCUPANCY—*contd.*

—— In *Sir* Land — Ex-Proprietary Tenant — Mortgage.

See **Act XVIII. of 1873, § 7. 1.**

BAKHAT RAM *v.* WAZIR ALI...**I. L. Rep. 1 All. 448.**

—— Submergence of Land—Extinguishment of Right of Occupancy by Non-Payment of Rent.

See **Extinguishment of Right of Occupancy.**

HEMNATH DUTT *v.* ASHGUR SINDAR...**I. L. Rep. 4 Cal. 894.**

1. —— *Title by Possession—Beng. Act VIII. of* 1869.] A ryot occupying and cultivating land for more than twelve years under one who is not the rightful landlord, acquires a right of occupancy. It is a right which, by virtue of the law, grows up in the ryot from the mere circumstance of cultivating land for twelve years or upwards, and paying rent due thereon; and is not a right conferred by any lessor. *Syud Ameer Hossein* v. *Sheo Suhae* (10 W. Rep. 338) followed. ZOOLFUN BIBEE *v.* RADHICA PROSONNO CHUNDER. *Jackson* and *Kennedy*, JJ.....**I. L. Rep. 3 Cal. 560; 1 Cal. Rep. 388, 1878.**

2. —— *Right of Occupancy Tenant—When transferable—Act XVIII. of* 1873, §§ 8, 9, 171—*Sale in Execution.*] *Held* by a majority of the Full Bench, that the rights of occupancy tenants other than tenants at fixed rates are not transferable by auction sale in execution of decrees to strangers, but can only be sold to persons who have become by inheritance co-sharers in such rights.

Held by *Stuart*, C.J.—That such rights are transferable by sale by public action in execution of decrees of the Civil Courts, without restriction. The right to enforce a legal process against property cannot, under any circumstances, be taken away except by express words. ABLAKH RAI *v.* UDIT NARAIN RAI...**I. L. Rep. 1 All. 353, 1877.**

See **4,** *infra.*

3. —— *Act X. of* 1859—*Act VIII. of* 1869 (*Bengal*)—Ijara—*Right to Renewal.*] By the terms of an *ijara* dated in 1865, the defendants were entitled at the end of a term of five years to a renewal of the lease of the *chur* land in dispute, at a rent to be fixed according to the measurement of the land to be made at that time, and to the productive powers of the land.

Digitized by Google

RIGHT OF OCCUPANCY—*contd.*

The defendants at the expiration of the lease continued in possession. Nothing was done with regard to assessing the rent for the new lease for three years afterwards, but the defendants remained in possession, and continued to pay the old rent into Court, the plaintiff having refused to accept it. The plaintiff then served notice on the defendants to come to a new settlement with her, and, in 1874, sued to recover possession. The defendants claimed a right of occupancy under Bengal Act VIII. of 1869, or under Act X. of 1869 :—

Held, that the defendants' holding as *ijardars* prior to and during the lease of 1865 did not create in them a right of occupancy, and that after the expiration of the lease of 1865 they held over, subject to the terms of that lease ; and that the plaintiff had a right to turn the defendants out of possession at the expiration of the lease, except so far as that right was qualified by the stipulation for a renewal ; that the defendants at the expiration of that lease had an equitable right to renewal for a period not exceeding five years, according to the stipulations in the agreement ; but that it was too late to rely upon their title to a renewal, which if it had been granted would now have expired. JARDINE, SKINNER & Co. *v.* RANI SURUT SOONDARI DEBI.....**L. Rep. 5 I. A. 164 ; 3 Cal. Rep. 140, 1878.**

4. —— *Not Transferable — Bengal Act VIII. of* 1869, § 6.] In the absence of clear, well-defined custom to that effect, the right of occupancy acquired by a cultivating ryot under § 6 of Bengal Act VIII. of 1869 cannot be transferred, either by voluntary sale or gift, or by sale in execution of a decree. DWARKA NATH MISSER *v.* HARRISH CHUNDER. *Jackson* and *McDonnell*, JJ....**I. L. Rep. 4 Cal. 925 ; 4 Cal. Rep. 130, 1879.**

See **2**, *supra.*

See **Act XVIII. of 1873, § 9. 1.**

UMRAO BEGAM *v.* LAND MORTGAGE BANK...**I. L. Rep. 1 All. 547 ; I. L. Rep. 2 All. 451.**

5. —— *How and by whom may be acquired.*] A firm of capitalists taking a lease of lands from a zemindar, and transferring their rights to the changing members of the firm, cannot by any length of occupation acquire occupancy

RIGHT OF OCCUPANCY—*contd.*

rights under § 6 of Act X. of 1859 of Bengal Act VIII. of 1869.

Canam v. Kylash Chunder Roy Chowdhry (25 W. Rep. 117) approved and followed. RAI KOMAL DOSSEE *v.* LAIDLEY. *Jackson* and *McDonnell*, JJ.....**I. L. Rep. 4 Cal. 957, 1879.**

6. —— Jalkar—*Suit for Possession by One of Several Proprietors.*] The owners of a thirteen-anna share in a *jalkar* sued to eject a lessee on his refusal to pay an enhanced rent :—

Held, that although the lessee of a *jalkar* cannot acquire rights of occupancy, he cannot be ejected by a suit brought by one only of several proprietors. A lease granted by all the proprietors cannot be varied or terminated at the suit of one. BOLLYE SATEE *v.* AKRAM ALLY. *Birch* and *Mitter*, JJ...**I. L. Rep. 4 Cal. 961, 1879.**

See **Jalkar.**

JUGGOBUNDHOO SHAHA *v.* PROMOTHONATH ROY...**I. L. Rep. 4 Cal. 767.**

RIGHT OF OCCUPANCY TENANT—Sale of—in Execution of Decree of Landholder.

See **Act XVIII. of 1873, § 9.**

UMRAO BEGAM *v* LAND MORTGAGE BANK...**I. L. Rep. 1 All. 547 ; I. L. Rep. 2 All. 451.**

See **Right of Occupancy. 2. 4.**

RIGHT OF OFFICIAL ASSIGNEE ON SALE OF LAND FOR ARREARS OF TIRVAI (RENT).

See **Insolvency. 2.**

CHINNA S. MUDALI *v.* KANDASVAMI REDDI...**I. L. Rep. 1 Mad. 59.**

RIGHT TO OFFICIATE AS AN HEREDITARY OFFICER—Suit for Declaration of.

See **Declaratory Decree. 17. 18.**

CHINTO ABAJI KULKARNI *v.* LAKSHMIBAI.....**I. L. Rep. 2 Bom. 375.**

KHANDO NARAYAN KULKARNI *v.* APPAJI SADASHIV KULKARNI... **I. L. Rep. 2 Bom. 370.**

Digitized by Google

RIGHT TO OFFICIATE AS SOLE REPRESENTATIVE OF A WATANDAR FAMILY—Suit for a Declaration of.

See **Declaratory Decree. 18.**

KHANDO NARAYAN KULKARNI *v.* APPAJI SADASHIV KULKARNI... **I. L. Rep. 2 Bom. 370.**

RIGHT OF PARDANASHIN WOMAN TO BE EXAMINED ON COMMISSION.

See **Pardanashin Female. 1.**

HURRO SOONDERY...**I. L. Rep. 4 Cal. 20.**

RIGHT TO PARTITION WHEN THERE HAS BEEN NONE FOR SIX OR SEVEN GENERATIONS.

See **Hindu Law—Partition. 8.**

THAKURDURRIAO SINGH *v.* THAKUR DAVI SINGH.....**L. Rep. 1 I A. 1.**

RIGHT OF PERPETUAL CULTIVATION.

See **Miras. 1.**

BABAJI *v.* NARAYAN...**I. L. Rep. 3 Bom. 340.**

RIGHT TO PERFORM RELIGIOUS SERVICES—Jurisdiction of Court to determine.

See **Dues for Religious Services performed.**

TIRU KRISHNAMA *v.* KRISHNASWAMI.....**L. Rep. 6 I. A. 120.**

RIGHT OF PRIVATE PROSECUTOR TO APPLY FOR REVISION OF AN ACQUITTAL.

See **Criminal Procedure Code, Act X. of 1872, § 297. 1. 3. 9.**

HARDEO...**I. L. Rep. 1 All. 139,**

AUROKIAM...**I. L. Rep. 2 Mad. 38.**

NARAIN DAS...**I. L. Rep. 1 All. 610.**

SUKHO *v.* DURGA PRASAD...**I. L. Rep. 2 All. 448.**

RIGHT OF EX-PROPRIETARY TENANT IN A MAHAL TO HOLD SIR LANDS ON A MORTGAGE OF PROPRIETARY RIGHTS FOLLOWED BY SALE.

See **Act XVIII. of 1873, § 7.**

BAKHAT RAM *v.* WAZIR ALI...**I. L. Rep. 1 All. 448.**

RIGHT OF A PURCHASER FROM A DEFENDANT, AFFER DECREE AGAINST THE LATTER, TO CARRY ON A SPECIAL APPEAL ON DEATH OF DEFENDANT.

See **Abatement of Appeal—Civil.**

MORESHVAR *v.* KUSHABA.....**I. L. Rep. 2 Bom. 248.**

RIGHT OF PURCHASER OF MONEY DECREE ON MORTGAGE.

See **Mortgage. 40.**

And *see* **Sale in Execution of Decree. 4. 9.**

RIGHT OF PURCHASER AT REVENUE SALE TO ENHANCE RENT.

See **Enhancement of Rent. 1.**

PURMANUND *v.* ROOKINEE...**I. L. Rep. 4 Cal. 793.**

RIGHT OF PURCHASER AT REVENUE SALE FOR ARREARS OF RENT TO RECOVER PURCHASE MONEY, ON SALE BEING SET ASIDE.

See **Setting Aside Sale of Superior Tenure, Effect of.**

SREENARAIN BAGCHEE *v.* SMITH. **I. L. Rep. 4 Cal. 807.**

See **Sale in Execution of Decree. 17.**

RAM THULL SING *v.* BISESWAR LALL SAHOO.....**L. Rep. 2 I. A. 131.**

RIGHT OF PURCHASER AT SALE IN EXECUTION OF DECREE ON SPECIALLY REGISTERED MORTGAGE BOND.

See **Sale in Execution of Decree. 5.**

AKHE RAM *v.* NAND KISHORE... **I. L. Rep. 1 All. 286.**

Digitized by Google

RIGHT OF PURCHASER AT SALE IN EXECUTION OF SIMPLE MONEY DECREE OBTAINED ON MORTGAGE BOND.

See **Sale in Execution of Decree. 4. 9.**

KHUB CHAND *v.* KALIAN DASS... I L. Rep. 1 All. 240.

BALWANT SINGH *v.* GOKARAN PRASAD.....Ibid. 433.

See **Mortgage. 40.**

GANPAT RAI *v.* SARUPI...I. L. Rep. 1 All. 446.

RIGHT OF PURCHASER AT SALE IN EXECUTION OF MONEY-DECREE OBTAINED BY MORTGAGEE UNCONNECTED WITH HIS MORTGAGE.

See **Mortgage. 8.**

TUKARAM *v.* RAMCHANDRA ..I. L. Rep. 1 Bom. 314.

See **Sheriff's Sale. 3.**

BHUGGOBUTTY DOSSEE *v.* SHAMACHURN BOSE.....I. L. Rep. 1 Cal. 337.

RIGHT OF PURCHASER AT SALE IN EXECUTION OF DECREE TO APPLY FOR POSSESSION — Accrues on Date of Certificate, not of confirmation of Sale.

See **Limitation. 96.**

BASAPA *v.* MARYA...I. L. Rep. 3 Bom. 433.

RIGHT OF PURCHASER AT SALE IN EXECUTION OF DECREE UNDER ACT VIII. OF 1859 TO RECOVER PURCHASE-MONEY ON EVICTION.

See **Civil Procedure Code, Act X. of 1877, § 315.**

MULO....I. L. Rep. 2 All. 299.

RIGHT OF PURCHASER AT SALE IN EXECUTION OF DECREE TO RECOVER PURCHASE-MONEY ON SALE BEING SET ASIDE.

See **Sale in Execution of Decree. 13. 16. 21.**

MAKUNDI LAL *v.* KAUNSILA...I. L. Rep. 1 All. 568.

COURT OF WARDS *v.* GAYA PERSAD. I. L. Rep. 2 All. 107.

BASAPPA *v.* DUNDAYA...I. L. Rep. 2 Bom. 540.

RIGHT OF PURCHASER AT SALE IN EXECUTION OF DECREE TO RECOVER PURCHASE-MONEY ON SALE BEING SET ASIDE— *contd.*

See **Sheriff's Sale. 1. 2. 4.**

DORAB ALI KHAN *v.* KHAJAH MOHEEOODEEN...I. L. Rep. 1 Cal. 55 ; I. L. Rep. 3 Cal. 806; L. Rep. 5 I. A. 116.

FRAMJI *v.* HORMASJI...I. L. Rep. 2 Bom. 258.

RIGHT OF PURCHASER OF FAMILY PROPERTY AT SALE IN EXECUTION OF PERSONAL DECREE AGAINST FATHER.

See **Sale in Execution of Decree. 10. 15.**

VENKATTASAMI NAIK *v.* KUPPAIYAN...I. L. Rep. 1 Mad. 354.

VENKATTARAMAYYAN *v.* VENKATASUBBRAMANIA.....Ibid. 358.

RIGHT OF PURCHASER AT SALE IN EXECUTION OF PERSONAL DECREE AGAINST A HINDU WIDOW.

See **Personal Decree against a Hindu Widow.**

BAIJUN DOOBEY *v.* BRIJ BHOOKUN. L. Rep. 2 I. A. 275; I. L. Rep. 1 Cal. 133.

See **Sale in Execution of Decree. 19.**

ALUKMONEE *v.* BANEE M. CHUCKERBUTTY...I. L. Rep. 4 Cal. 677.

RIGHT OF PURCHASER AT SALE IN EXECUTION OF DECREE ON A MORTGAGE.

See **Emblements.**

LAND MORTGAGE BANK *v.* VISHNU. I. L. Rep. 2 Bom. 670.

See **Mortgage. 6.**

MUTHORA NATH *v.* CHUNDERMONEY...I L. Rep. 4 Cal. 817.

See **Mortgage. 1.**

SHRINGAPURE *v.* PETHE...I. L. Rep. 2 Bom. 662.

Digitized by Google

RIGHT OF PURCHASER AT SALE IN EXECUTION OF DECREE AGAINST REPRESENTATIVE OF DECEASED MAHOMEDAN.

See **Sale in Execution of Decree. 20.**

HENDRY *v.* MUTTY LALL DHUR... **I. L. Rep. 2 Cal. 395.**

RIGHT OF PURCHASER AT SALE IN EXECUTION OF DECREE OF SHARE OF MEMBER OF UNDIVIDED HINDU FAMILY.

See the Index heading **Alienation of Ancestral Property — by Sale in Execution of Decree against a Member of an Undivided Family.**

RIGHT OF PURCHASER FROM NEXT OF KIN OF DECEASED TO APPLY FOR REVOCATION OF PROBATE.

See **Probate. 3.**

KOMOLLOCHURN *v.* NILRUTTUN...**I. L. Rep. 4 Cal. 860.**

RIGHT OF PURCHASER PRIOR TO DECREE FOR EJECTMENT IN RENT-SUIT, TO QUESTION DECREE BY SUIT, IF NOT PARTY TO RENT-SUIT.

See **Rent-Suit.**

MADHO PROSHAUD *v.* PURSHAN RAM.....**I. L. Rep. 4 Cal. 520.**

RIGHT OF PURCHASER AT SALE BY SHERIFF UNDER WRIT OF FIERI FACIAS, TO RECOVER PURCHASE-MONEY, ON EVICTION ON SALE BEING DECLARED VOID.

See **Sheriff's Sale. 1. 2. 4.**

DORAB ALLY KHAN *v.* KHAJAH MOHEEOODDEEN...**I. L. Rep. 1 Cal. 55; I. L. Rep. 3 Cal. 806; L. Rep. 5 I. A. 116.**

FRAMJI *v.* HORMASJI...**I. L. Rep. 2 Bom. 258.**

RIGHT OF PURCHASER OF SHARE IN ANCESTRAL PROPERTY OF UNDIVIDED MEMBER OF UNDIVIDED HINDU FAMILY AT EXECUTION SALE, TO ENFORCE PARTITION.

See **Hindu Law—Undivided Family. 3.**

DEENDAYAL *v.* JUGDEEP N. SINGH. **L. Rep. 4 I. A. 247; I. L. Rep. 3 Cal. 196.**

RIGHT TO RECOVER GOVERNMENT REVENUE PAID DURING WRONGFUL POSSESSION—*Set-off—Voluntary Payments.*] The plaintiff purchased certain property at an execution sale and obtained possession of it. The defendant had purchased the same property at a prior execution sale, and recovered possession thereof from the plaintiff.

In a suit by the plaintiff to recover from the defendant sums paid by him during his possession for Government revenue:—

Held, that the plaintiff, though he might have supposed that he was the lawful owner of the property, was really in the eye of the law a trespasser and wrong-doer in holding possession of it against the defendant, and that whatever sums he might have paid in respect of it while thus in possession were paid in his own wrong. He had no right, legally or equitably, to intermeddle with the property at all; and it is not because payments which he may have made enured to the benefit of the rightful owner, that the latter was bound to recoup him for those payments.

If *A.* pays *B.*'s debts, supposing he has authority to do so, but in fact having no such authority, he cannot recover the amount against *B.*; and if *A.* innocently obtains possession of *B.*'s horse, and wrongfully holds possession of it, believing that he has a right to do so, he cannot claim from *B.* the price of food or medicine which he may have supplied to the horse, though the horse would have died without such food or medicine, and *B.* alone may have benefited by *A.*'s expenditure.

The right which a defendant has, who is sued for *mesne* profits, to deduct any necessary payments which he may have made from the amount of his receipts, depends upon the principle that in a suit for mesne profits, the plaintiff is only entitled to recover the actual loss sustained by being kept out of possession; and, therefore, in ascertaining such loss, it is right to take into consideration the receipts on the one

Digitized by Google

RIGHT TO RECOVER GOVERNMENT REVENUE PAID DURING WRONGFUL POSSESSION—*contd.*

hand, and the necessary payments on the other. But it does not follow from this that if a man has wrongfully taken possession of property and held it adversely to the true owner, and has been a loser in consequence, he has a right to recoup himself for his losses as against the true owner. He must be content in such case to bear the burthen of his own wrong. TILUCK CHAND *v.* SOUDAMINI DASI. *Garth*, C.J., and *Tottenham*, J.....I. L. Rep. 4 Cal. 566 ; 3 Cal. Rep. 456, 1878.

See **Co-Sharers of Patni Taluk.**

MOHUN CHUNDER BANNERJEE *v.* RAM PURSONO CHOWDHRY. I. L. Rep. 4 Cal. 539.

See **Sale in Execution of Decree. 17.**

RAM TILUK SINGH *v.* BISSESWAR LALL SAHOO...L. Rep. 2 I. A. 131.

See **Setting aside Sale of Superior Tenure—Effect of.**

SREENARAIN BAGCHEE *v.* SMITH. I. L. Rep. 4 Cal. 807.

RIGHT TO RECOVER PURCHASE-MONEY ON THE SETTING ASIDE OF A SALE IN EXECUTION OF A DECREE.

See **Sale in Execution of Decree. 13. 21.**

MAKUNDI LAL *v.* KAUNSILA...I. L. Rep. 1 All. 568.

BASAPPA *v.* DUNDAYA...I. L. Rep. 2 Bom. 540.

See **Sheriff's Sale. 1. 2. 4.**

DORAB ALLY KHAN *v.* KHAJAH MOHEEOODEEN...I. L. Rep. 1 Cal. 55 ; I. L. Rep. 3 Cal. 806 ; L. Rep. 5 I. A. 116.

FRAMJI *v.* HORMASJI...I. L. Rep. 2 Bom. 258.

RIGHT TO RECOVER PURCHASE-MONEY ON EVICTION OF PURCHASER AT SALE IN EXECUTION UNDER ACT VIII. OF 1859.

See **Civil Procedure Code, Act X. of 1877, § 315.**

MULO...I. L. Rep. 2 All. 299.

RIGHT TO REDEEM.

See **Mortgage.**

—— Acknowledgment of.

See the Cases under **Acknowledgment of Mortgagor's Title.**

—— Limitation to—Adverse Possession by Mortgagee in Possession.

See **Mortgage. 37.**

ALLI MUHAMMAD *v.* LALTA BUKHSH. I. L. Rep. 1 All. 655.

—— *Onus Probandi* of.

See **Onus Probandi. 6.**

RATAN KUAR *v.* JIWAN SINGH... I. L. Rep. 1 All. 194.

RIGHT OF RENEWAL OF LEASE—*Chur* Land.

See **Right of Occupancy. 3.**

JARDINE, SKINNER & Co. *v.* RANI SOORAT SOONDARI DEBI...L. Rep. 5 I. A. 161.

RIGHT OF REPRESENTATIVE OF DECEASED JUDGMENT CREDITOR TO CONTINUE EXECUTION PROCEEDINGS COMMENCED BY HIM, LIMITATION TO.

See **Limitation. 95.**

GULABDAS *v.* LAKSHMAN NARHAR. I. L. Rep. 3 Bom. 221.

RIGHT TO RESCIND CONTRACT.

See **Contract. 9.**

SOOLTAN CHUND *v.* SCHILLER... I. L. Rep. 4 Cal. 252.

RIGHT TO RESCIND CONTRACT FOR SALE OF GOODS, ON ACCOUNT OF BREACH OF WARRANTY OF QUALITY.

See **Sale of Goods.**

SHOSHI MOHUN *v.* NOBO KRISHTO. I. L. Rep. 4 Cal. 801.

RIGHT OF RESPONDENT TO APPEAL AGAINST JUDGEMENT EX PARTE IN APPEAL.

See **Appeal—Civil. 6. 28.**

KALI KISHOR ROY *v.* DHUNUNJOY ROY.....I. L. Rep. 3 Cal. 228.

Ex parte MADALATHA.....I. L. Rep. 2 Mad. 75.

Digitized by Google

RIGHT OF RESPONDENT WITHOUT CROSS-APPEAL TO QUESTION CORRECTNESS OF ANSWER GIVEN BY FULL BENCH TO QUESTION OF LAW REFERRED BY DIVISION BENCH.

See **Practice—Privy Council. 3.**

MUSST. PHOOLBAS KOONWUR *v.* LALLA JOGESHUR SAHOY...**L. Rep. 3 I. A. 7; I. L. Rep. 1 Cal. 226.**

RIGHT TO RESUME—Grant in lieu of Maintenance—Limitation.

See **Limitation. 8.**

PETAMBER BABOO *v.* NILMONY SINGH.....**I. L. Rep. 3 Cal. 793.**

RIGHT TO RESUME OR ASSESS SERVICE LANDS ON CESSATION OF SERVICE.

See **Ghatwali Tenure.**

LEELANUND SINGH BAHADOOR *v.* THAKOOR MUNRUNJUN SINGH. **I. L. Rep. 3 Cal. 251.**

See **Resumption. 2.**

KEVAL *v.* TALUKDARI SETTLEMENT OFFICER...**I. L. Rep. 1 Bom. 586.**

RIGHT OF REVERSIONER—On Hindu Widow's divesting herself of her Interest in her Husband's Estate.

See **Hindu Law—Forfeiture of Widow's Estate.**

PRAG DAS *v.* HARI KISHEN...**I. L. Rep. 1 All. 503.**

RIGHT OF REVERSIONER (DECEASED DAUGHTER'S SON) TO SET ASIDE ALIENATION OF ANCESTRAL PROPERTY BY MATERNAL AUNT.

See **Hindu Law — Inheritance—Daughter's Sons.**

BAJNATH *v.* MAHABIR.....**I. L. Rep. 1 All. 608.**

RIGHT OF REVERSIONARY HEIR—Sale of Hindu Widow's Estate in Execution of Personal Decree against her.

See **Personal Decree against a Hindu Widow.**

BAIJUN DOOBEY *v.* BRIJ BHOOKUN LALL AWASTI...**L. Rep. 2 I. A. 275; I. L. Rep. 1 Cal. 133.**

RIGHT OF RYOT TO HOLD SO LONG AS HE PAYS GOVERNMENT REVENUE.

See **Rights of Mirasdars.**

FAKIR MUHAMMAD *v.* TIRUMALA CHARIAR.....**I. L. Rep. 1 Mad. 205.**

See **Partition Suit.**

SAMINDA PILLAI *v.* SUBBA REDDIAR.....**I. L. Rep. 1 Mad. 333.**

RIGHT TO SCOUR ARTIFICIAL WATER-COURSE.

See **Artificial Watercourse.**

RAMESHUR PERSHAD *v.* KOONJ BEHARI...**L. Rep. 6 I. A. 33; L. Rep. 4 App. Ca. 121; I. L. Rep. 4 Cal. 633.**

RIGHT OF SECOND MORTGAGEE TO PURCHASE AT SALE UNDER POWER OF SALE.

See **Mortgage. 34.**

RAJAH KISHENDATT *v.* RAJAH MUMTAZ ALI ..**L. Rep. 6 I. A. 145, 160.**

RIGHT TO SHARE IN DESHPANDE WATAN—Suit for Declaration of.

See **Pensions Act XXIII. of 1871, 4.**

BABAJI *v.* RAJARAM...**I. L. Rep. 1 Bom. 75.**

RIGHT TO SHARE IN JYOTISHI WATAN—Suit for Declaration of.

See **Pensions Act XXIII. of 1871. 5.**

BABAJI *v.* RAJARAM...**I. L. Rep. 1 Bom. 75.**

RIGHT TO SHARE IN KULKARNI WATAN—Suit for Declaration of.

See **Pensions Act XXIII. of 1871. 5.**

BABAJI *v.* RAJARAM...**I. L. Rep. 1 Bom. 75.**

RIGHT TO SHARE IN PATILKI WATAN AND OFFICIATE IN ROTATION—Suit for Declaration of.

See **Declaratory Decree. 19. 20.**

NINDAN GAVDA *v.* MALAN GAVDA.....**I. L. Rep. 1 Bom. 533.**

BABAJI *v.* NANA... **I. L. Rep. 1 Bom. 535.**

Digitized by Google

RIGHT OF SISTER TO INHERIT IN PREFERENCE TO SEPARATED HALF BROTHER.

See **Hindu Law — Inheritance — Sister. 1.**

SAKHARAM S. ADHIKARI *v.* SITABAI...**I. L. Rep. 3 Bom. 353.**

—— In Preference to Separated Remote Male Relative of Deceased.

See **Hindu Law — Inheritance — Sister. 2.**

DHONDU GURAR *v.* GANGABAI... **I. L. Rep. 3 Bom. 369.**

—— In Preference to Widow of Separated Paternal Uncle.

See **Hindu Law — Inheritance — Sister. 2.**

MAHANTAPA *v.* NILGANGAWA...**I. L. Rep. 3 Bom. 368, n.**

RIGHT OF SON TO ENFORCE PARTITION OF ANCESTRAL IMMOVEABLE PROPERTY AGAINST THE WILL OFHIS FATHER.

See **Hindu Law—Partition. 2. 13.**

KALI PARSHAD *v.* RAM CHARAN... **I. L. Rep. 1 All. 159.**

SOORAJ B. KOER *v.* SHEO PERSHAD. **L. Rep. 6 I. A. 88-100.**

RIGHT OF SUBSEQUENT MORTGAGEE TO NOTICE OF FORECLOSURE.

See **Beng. Reg. XVII. of 1806, § 8.**

DIRGAJ SINGH *v.* DEBI SINGH...**I. L. Rep. 1 All. 499.**

RIGHT TO SUE.

See the separate headings under **Suit.**

See **Entry of Names of Khot's Tenants in Revenue Survey Register as Occupants.**

BAIN *v.* THE SURVEY COMMISSIONER OF RATNAGIRI...**I. L. Rep. 3 Bom. 134.**

—— to Abate Public Nuisance.

See **Right to Sue. 1 to 5.**

—— Act of State.

See **Act of State.**

And *see* **Right to Sue. 7.**

RIGHT TO SUE—*contd.*

—— Barred by Act XIV. of 1859 not Revived by Repeal of that Act.

See **Limitation. 15. 16. 17.**

NOCOOR CHUNDER BOSE *v.* KALLY COOMAR GHOSE.. **I. L. Rep. 1 Cal. 328.**

ABDUL KARIM *v.* MANJI.....**I. L. Rep. 1 Bom. 295-305.**

RAMCHUNDER *v.* JUGGUTMONMOHINEV .....**I. L. Rep. 4 Cal. 283.**

See **Hindu Law—Maintenance of Widow. 6.**

KRISHNA M. BOSE *v.* OKHILOMINI. **I. L. Rep. 3 Cal. 331.**

—— Cause of Action—Right to Turn of Worship of Idol.

See **Right to Sue. 6.**

And *see* **Right to Worship of Idol.**

—— for Costs.

See **Right to Sue. 11-12.**

—— for Damages caused by Civil Suit.

See **Right to Sue. 12.**

—— Insolvency of Plaintiff.

See **Insolvency. 1.**

SADODIN *v.* SPIERS .....**I. L. Rep. 3 Bom. 437.**

—— Land taken for Public Purposes—Apportionment of Compensation by Decree under Act X. of 1870, § 38—Suit to reopen Question so settled.

See **Land Acquisition Act X. of 1870, § 39.**

NILMONEE SINGH *v.* RAMBUNDHOO. **I. L. Rep. 4 Cal. 757.**

—— Obstruction to Flow of Water.

See **Riparian Proprietors.**

KALI KISHEN *v.* JODOO LAL...**L. Rep. 6 I. A. 190.**

—— To Recover Payments by Usufructuary Mortgagee on account of Enhanced Government Revenue.

See **Mortgage. 41.**

NIKKA MAL *v.* SULAIMAN SHEIKH GARDNER...**I. L. Rep. 2 All. 193.**

Digitized by Google

RIGHT TO SUE—*contd.*

—— to Set Aside Adoption by Daughter.

See **Right to Sue. 8.**

—— to Set Aside Wrongful Distraint.

See **Right to Sue. 9.**

—— of Village Priest against his Yajman.

See **Right to Sue. 13.**

—— *Wakf*—Parties beneficially interested in—Right of—to Sue.

See **Mahomedan Law—Wakf.**

FATEH SAHEB BIBI *v.* DAMODAR PREMJI...**I. L. Rep. 3 Bom. 84.**

—— of Worshippers of Idol for Breach of Trust.

See **Right to Sue. 10.**

1. —— *Obstruction to Public Road—Special Damage.*] The plaintiffs, who were Musulmans, sued to establish their right to carry *tabuts* in procession along a certain road for immersion in the sea, and alleged that the defendants, also Musalmans, had obstructed them in so doing, and that the Magistrate, at the instance of the defendants, had made an order prohibiting the plaintiffs from using the road for that purpose. but did not allege any personal loss or damage to the plaintiffs arising from the obstruction. Both the lower Courts found that the road along which the plaintiffs desired to carry their *tabuts* to the sea was a public road.

Held, that the plaintiffs could not maintain an action in respect of such obstruction, unless they could prove some personal loss or injury to themselves, in addition to the general inconvenience to the public, and that although a Court of Equity, when private individuals suffer an injury quite distinct from that of the public in general in consequence of a public nuisance, will grant an injunction, and such relief as may compel the wrong-doer to take active measures to discontinue the nuisance, yet the mere absence of the religious or sentimental gratification arising from carrying *tabuts* along a particular public road was not any such particular loss or injury as would be sufficient, according to the English and Indian precedents, to sustain a civil action. SATHU KADIR SAUSARE *v.* IBRAHIM AGA. *Westropp*, C.J., and *Melvill*, J.....**I. L. Rep. 2 Bom. 457, 1877.**

2. —— *Public Obstruction.*] In all civil suits for the removal of a public nuisance, the plaintiff must show that he himself has suffered some particular inconvenience or injury resulting from the obstruction. GEHANJI KES PATIL *v.* GANPATI LAKSHMAN. *Westropp*, C.J., and *N. Harridas*, J ..**I. L. Rep. 2 Bom. 469, 1875.**

3. —— *Obstruction to Public Thoroughfare—Special Damage.*] No suit lies for the removal of an obstruction on a public thoroughfare unless the plaintiff has sustained special damage therefrom. KARIM BAKSH *v.* BUDHA. *Turner* and *Oldfield*, JJ.....**I. L. Rep. 1 All. 249, 1876.**

Note.—The Court seem to have been of opinion that the case of *Jina Ranchod v. Jodha Ghella* (1 Bom. H. C. Rep. 1) was opposed to this view of the law; but an examination of that case, which is not satisfactorily reported, shows that the decision was based on the supposition that the plaintiff had sustained special damage.

4. —— *Public Thoroughfare — Easement—Municipal Committee, Powers of — Special Damage.*] In a suit to establish a right of access to a public thoroughfare and to the use of a certain drain, it appeared that certain land which formed part of a public thoroughfare, and which adjoined the plaintiff's premises, had been sold by the Municipality to the defendant, but a sufficient portion of land remained in use as a public road. While the land remained part of the public thoroughfare, the plaintiff had immediate access to such thoroughfare, and the use of a drain. After the purchase by the defendant, he appropriated to his own exclusive use that portion of the land purchased by him, so as to obstruct the plaintiff's access to the new thoroughfare, and his use of the drain:—

Held, that the plaintiff having suffered injuries and inconveniencies by the closing of the thoroughfare by the defendant, which affected him beyond what affected the public at large, had a right of action against the defendant, and there was nothing in the circumstance that the defendant's title was derived by purchase from the Municipality, which could affect the plaintiff's right to relief, inasmuch as the Municipality could not have dealt with the old thoroughfare to the special injury of the plaintiff, but in closing a portion of it would have been bound to provide adequately for his drainage, and his access to the highway which they substituted for theold one. FAZAL HAQ *v.* MAHA CHAND

Digitized by Google

RIGHT TO SUE—*contd.*

Stuart, C.J., and *Oldfield*, J...**I. L. Rep. 1 All. 557, 1878.**

See EMPRESS *v.* PROJONATH DEY...**I. L. Rep. 2 Cal. 425.**

Under **Bengal Act III. of 1864.**

5. —— *Suit to remove Obstruction on Public Thoroughfare—Special Damage.*] Where special damage is caused to a person by an obstruction placed on a public thoroughfare, he is entitled to sue in the Civil Courts to have the nuisance abated, notwithstanding the provisions of the Criminal Procedure Code for the removal of obstructions in public thoroughfares by summary proceedings before a Magistrate. RAJ KOOMAR SINGH *v.* SAHEBZADA ROY.....**I. L. Rep. 3 Cal. 20, 1877, F. B.**

S. C. under **Reference to Full Bench.**

6. —— *Cause of Action — Right to Turn of Worship*] A plaint, which alleged that the plaintiffs were entitled to perform the worship of an idol on a certain day, and that they had been prevented performing such worship on that day by the refusal of the defendant to deliver up to them the idol for that purpose, and that in consequence of such refusal the plaintiffs had been disgraced in the eyes of the other members of the family, and had lost the benefit, from a religious point of view and otherwise, which they would have enjoyed if they had performed the worship in their turn—*Held* to disclose a cause of action. DEBENDRONATH MULLICK *v.* ODIT CHURN MULLICK. *Pontifex*, J...**I. L. Rep. 3 Cal. 390, 1878.**

7. —— *Liability of Government—Acts done in Exercise of Sovereign Powers, 21 and 22 Vict., C. 106—Matter of Revenue—21 Geo. III., C. 70, § 8.*] The plaintiff, for several years before and up to 31st March 1874, carried on the business of a retail seller of *ganja* and *sidhi* in shops in Calcutta, licensed for that purpose by the proper Government officers, under certain Government regulations; and he kept the *ganja* and *sidhi* in godowns also licensed by Government. The license in each case lasted only for one year, terminating on 31st March, and might for sufficient cause be withdrawn within the year. On 4th March 1874, while the plaintiff was carrying on his business, the Superintendent of Excise for Calcutta put up for public competition the right of retail sale of, amongst other excisable articles, *ganja* and *sidhi*, which was the usual way of distributing the yearly licenses. The sale notification contained a list of the shops, with the localities where they were situated, but the right was reserved, in case of combination, or for other cause, to transfer, before settlement, any shop from the locality specified to some locality in the neighbourhood; and the conditions of sale were stated to be: "that the Collector does not bind himself to accept the highest bid; that the settlement with the accepted auction purchaser will be contingent on the approval by the police authorities of the proposed locality of the shop and the character of the applicant for license; that the person accepted as the auction purchaser shall deposit at once a sum equal to the license fee payable for two months, and shall at the same time state in writing in what building his shop will be opened, it being understood that the above deposit will be returned to any person whose license is subsequently refused for police reasons." At the sale the plaintiff was the highest bidder for the licenses for five shops for the sale of *ganja* and *sidhi*, and his bids were recorded; and he also paid a deposit in respect of those licenses, amounting to Rs. 968. Subsequently the Excise authorities refused passes to the plaintiff for the excisable articles which constituted his stock in trade, and so in effect compelled him to close his godowns and shops.

In a suit by the plaintiff against the Secretary of State for India, in which the plaintiff alleged that the Excise authorities accepted his bid, and thereby contracted on the part of Government to give him licenses for the five shops and to allow him to exercise his trade therein, and that by their not giving him these licenses, and by forcing him to close his shops and godowns, a breach of contract had been committed, for which he was entitled to damages:—

Held by *Phear*, J.—That the plaintiff must fail in his suit, as he had not attempted to make out any case against the Secretary of State for India or any specific person; and that even treating the plaint as one presented against the Secretary of State for India in Council, the plaintiff must fail, as there was no such contract established between him and the Government as he relied upon, the acceptance of the bid (if it in fact took place), and the payment of the deposit, being, at most, a preliminary contract only, by which one term of the principal contract was agreed on, *viz.*, the price or license fee at which the shops, if settled at all with the plaintiff, were to be settled.

Digitized by Google

RIGHT TO SUE—*contd.*

Held, also, both in the Court below and on appeal, even assuming there was a contract, that the suit was not maintainable, being in respect of acts done by the Government in the exercise of sovereign powers. Suits such as might, previous to the passing of Stat. 21 and 22 Vict., C. 106, have been brought against the East India Company, and subsequently against the Secretary of State for India in Council, are limited to suits for acts done in the conduct of undertakings which might be carried on by private individuals without sovereign powers. NOBIN CHUNDER DEY *v.* THE SECRETARY OF STATE FOR INDIA. *Garth*, C.J., and *Macpherson*, J...**I. L. Rep. 1 Cal. 11.**

Dissented from in ..**I L. Rep. 4 Mad. 344.**

And **I. L. R. 5 Mad. 273, 1875.**

8. —— *Hindu Widow's Right to Sue to set Aside an Adoption by her Daughter-in-law.*] A Hindu widow is entitled to sue to set aside an adoption by her daughter-in-law, in respect of her reversionary interest in her deceased son's estate, contingent on her surviving her daughter-in-law ; but, having regard to her remote and contingent interest, their Lordships gave no opinion as to what the effect of a decree in such a suit would be,—whether one in favour of the adoption would bind any other reversioner, or whether, on the other hand, a decision adverse to the adoption would bind the adopted son as between himself and anybody except the plaintiff. JUMOONA DASSYA CHOWDHRANI *v.* BAMASOONDERAI DASSYA CHOWDHRANI...**L. Rep. 3 I. A. 72, 1876 ; I. L. Rep. 1 Cal. 289.**

S. C. under **Hindu Law — Adoption. 10.**

And under **Bengal Reg. X. of 1793, § 33.**

9. —— Bhag-Jote *Tenure — Wrongful Distraint—Suit to set aside.*] Where lands were held under a *bhaǧ-jote* tenure, the landlord supplying the seed, and the agreement being that the tenants should cut and store the crops on the landlord's *chuck*, and that after the threshing, division should be made between the landlord and the cultivators, and the crops were wrongfully distrained by a third person :—

Held, that the dominion over the crop was with the landlord, who was entitled to sue to set aside the wrongful distraint. HORRO NARAIN *v.* SHOODHA KRISHTO BERAH. *Birch* and *Mitter*, JJ...**I. L. Rep. 4 Cal. 890 ; 4 Cal. Rep. 32, 1879.**

10. ——*Suit Relating to Dewasthan Property—Breach of Trust—Worshippers of Idol—Act X. of 1877, § 539.*] Worshippers or devotees of an idol are entitled to bring a suit complaining of a breach of trust with reference to the fund or property belonging to the idol, or appendant to its temple. *Quære*, whether in a suit brought after Act X. of 1877 came into force, § 539 of that Act could, in speaking of "public charitable purposes," be held applicable to the *dewasthan* of an idol or temple dedicated merely to the purposes of the idol or temple. RADHABAI *v.* CHAMNAJI RANJI SALL. *Westropp*, C. J., and *Kemball*, J ..**I. L. Rep. 3 Bom. 27, 1878.**

11. —— *Costs of Proceedings under Act XX. of 1864.*] An action will not lie to recover the costs of proceedings taken under Act XX. of 1864 by a creditor to obtain the appointment of an administrator to the estate of a minor, against whom he wished to file a suit, when the Court before which such proceedings were taken had made no order as to the payment of those costs. KABIR RAMJAN *v.* MAHADU SHIWAJEE. *Westropp*, C.J., and *Melvill*, J...**I. L. Rep. 2 Bom. 360, 1877.**

12.—— *Suit for Damages Caused by a Civil Action.*] A suit is not maintainable for damages occasioned by a civil action, even though brought maliciously and without reasonable and probable cause ; nor will a suit lie to recover costs awarded by a Civil Court, though it may lie for costs which could not be so awarded. PRANSHANKAR SHIVSHANKAR *v.* GOVINDLAL PARBHUDAS. *Melvill* and *N. Harridas*, JJ...**I. L. Rep. 1. Bom. 467, 1876.**

13.—— *Suit by a Village Priest against his Yajman.*] In the Presidency of Bombay a village priest can maintain a suit against a *yajman* who has employed another priest to perform ceremonies, and recover the amount of the fee which would properly be payable to him if he had been employed to perform such ceremonies.

As a rule, the fee paid to the priest actually employed would afford a fair indication of the amount recoverable by the plaintiff under such circumstances.

Semble, a *yajman* ought to pay to the village or city priest, if not employed, a fee similar in

Digitized by Google

RIGHT TO SUE—*contd.*

amount to that which he (the *yajman*) pays to the priest actually employed, if the latter were not unreasonably large. DINANATH ABAJI *v.* SADASHIV HARI MADHAVA. *Westropp*, C.J., and *Kemball*, J ..... **I. L. Rep. 3 Bom. 9, 1878.**

RIGHTS OF SUPERIOR AND LOWER RIPARIAN PROPRIETORS.

See **Easement. 3.**

SUBRAMANIYA AYYER *v.* RAMCHANDRA RAU...**I. L. Rep. 1 Mad. 335.**

See **Riparian Proprietors.**

KALI K. TAGORE *v.* JADOO LAL MULLICK...**L. Rep. 6 I. A. 190.**

RIGHT TO TURN OF WORSHIP OF IDOL.

See **Right to Sue. 6.**

DEBENDRONATH *v.* ODIT CHURN... **I. L. Rep. 3 Cal. 390.**

And *see* **Right to Worship of Idol.**

RIGHT OF WAY—Decree establishing—against Mortgagor in Possession, in Suit to which Mortgagee not Party, and of which Mortgagee has no Notice, no Estoppel against Mortgagee.

See **Estoppel. 4.**

BONOMALEE *v.* KOYLASH CHUNDER .....**I. L. Rep. 4 Cal. 692.**

RIGHT OF WIDOW TO ENFORCE PARTITION.

See **Hindu Law—Partition. 3.**

SOUDAMONEY *v.* JOGESH CHUNDER. **I. L. Rep. 2 Cal. 262.**

RIGHT OF WITNESS TO APPEAR BY COUNSEL—*Practice—Indian Insolvent Act 11 and 12 Vict., C. 21, § 36.*] Section 36 of the Indian Insolvent Act contemplates that a witness appearing for examination by virtue of an order made under that section, shall be in the same position as a witness in any civil proceeding, and that only the insolvent and the opposing creditors are entitled, as of right, to appear by counsel. The practice in bankruptcy in England, based apparently on courtesy, of allowing counsel to appear on behalf of a witness in certain cases, and to take part in the

RIGHT OF WITNESS TO APPEAR BY COUNSEL—*contd.*

proceedings in a modified way, does not prevail in the Insolvent Debtors' Court in Bombay, and the witness cannot (even if he could in England, which may well be doubted) claim the assistance of counsel as of right; but counsel may properly be allowed to attend under special circumstances. *In the matter of* NURSEY KESSOWJEE. *Sargent* and *Melvill*, JJ...**I. L. Rep. 3 Bom. 270, 1879.**

RIGHT TO WORSHIP OF IDOL—*Limitation Act IX. of 1871, Sched. II., Arts. 118, 131—Exclusive Worship—Right to Turn of Worship.*] The plaintiff, in 1875, sued as heir of her husband for possession of a share of a certain taluk, and to establish her exclusive right of worship of an idol *A.*, and the right to the worship of an idol *B.* for one-sixth of every year, from the possession and enjoyment of which, she alleged, she had been dispossessed by the defendants in 1866:—

Held, that the plaintiff's claim as to the idol *B.* was clearly brought within the purview of Art. 131 of Sched. II. of the Limitation Act IX. of 1871; but that the claim as regards idol *A.* was governed by Art. 118 of the same Schedule, and not having been brought till after the expiration of more than six years after the accrual of the cause of action, was barred.

The right of worshipping an idol is not of the nature of an interest in immoveable property. EHSAN CHUNDER ROY *v.* MONMOHINI DASSI. *White* and *Mitter*, JJ...**I. L. Rep. 4 Cal. 683, 1878.**

RIGHTS AND LIABILITIES OF DRAWER, DRAWEE, AND PAYEE.

See **Hundi.**

SHETH KAHANDAS NARANDAS *v.* DHAIABHAI.....**I. L. Rep. 3 Bom. 182.**

RIOT.

See **Land held by Joint Owners.**

EMPRESS *v.* RAJCOOMAR SINGH... **I. L. Rep. 3 Cal. 573.**

RIOTING AND CAUSING HURT.

See **Offence made up of Several Offences.**

EMPRESS *v.* RAM ADHIN.....**I. L. Rep. 2 All. 139.**

Digitized by Google

RIPARIAN PROPRIETORS.

See **Accretion.**

RUGHOOBUR *v.* DYAL MAHARAJA KISHEN PERTAB...**L. Rep. 6 I. A. 211.**

—— Rights of Superior and Lower.

See **Easement. 3.**

SUBRAMANIYA *v.* RAMCHANDRA RAU...**I. L. Rep. 1 Mad. 335.**

—— *Flow of Water—Encroachment*] The plaintiff and defendant were proprietors of land and gardens on opposite sides of a tidal creek, which sides were protected by walls. The defendant, the wall on his side becoming dilapidated, constructed a fresh one, altering its direction, and encroaching five feet on the bed of the stream.

In a suit for possession of the land by demolishing the said wall, the plaintiff alleged that he was entitled to the *solum* on which it was built, that his navigation was obstructed, and that there was danger of his screw-house falling down; it appeared, however, that the Government, and not the plaintiff, was the owner of the *solum*, and that the plaintiff neither claimed nor proved that he was entitled to the flow of water as it had been accustomed to flow, and that that flow had been seriously and sensibly diverted so as to be an injury to his rights :—

Held, that the plaintiff had failed to show either *damnum* or *injuria*, and had therefore no right of action. KALI KISHEN TAGORE *v.* JADOO LAL MULLICK...**L. Rep. 6 I. A. 190; 5 Cal. Rep. 97, 1879.**

RIVAL DECREES.

See **Execution of Decree. 14.**

UDAI SINGH *v.* BHARAT SINGH .. **I. L. Rep. 1 All. 456.**

ROAD—Presumption of Ownership of Site of.

See **Ownership of Site of Road.**

MOBARUCK SHAH *v.* TOOFANY... **I. L. Rep. 4 Cal. 206.**

—— Presumption as to Title to Soil of Private Occupation.

See **Title to Soil of Road.**

SHAM CHURN *v.* TARINY CHURN... **I. L. Rep. 1 Cal. 422, 428.**

ROAD CESS ACT (BENGAL ACT X. OF 1871)—Kabuliat—*Construction of—Income-Tax—Suit for Arrears of Rent.*] In 1862, when the income-tax was in force, the plaintiff made a *patni* settlement of certain lands with the defendant at a rent of Rs. 25,696 *per annum*, of which Rs. 13,996 was to be annually lodged by the defendant with the Collector, and the balance Rs. 11,700, described as the amount of annual profits to be paid by the defendant to the plaintiff, and the *kabuliat* contained a clause that, "If the revenue be enhanced in any way, or any imposts be laid by Government in future, I (the defendant) shall pay the same separately in addition to the aforesaid settled amount of rent * * * but you the (plaintiff) shall pay the income-tax according to your income." In 1876, the plaintiff sued the defendant for arrears of rent. The defendant, under the *kabuliat*, claimed to set off as a tax on income a sum which he had paid under the Road Cess Act (Bengal Act X. of 1871), which was passed after the Income-tax Act had been repealed.

Held, that the income-tax intended by the *kabuliat* was the income-tax then in force, and any income-tax that might thereafter be imposed which fell upon income and was of the same character and nature as the income-tax then in force. But, having regard to the provisions of the Road Cess Act, the impost was not an income tax, and the defendant could not, therefore, set off the amount as income-tax.

The income-tax which was levied at the date of the *kabuliat* was imposed by the Legislature of the Government of India on all persons whose incomes exceeded a certain amount, and formed part of the financial system of India, and was levied mainly, if not entirely, for the purposes of India. The subject-matter of the tax was a man's annual income, from whatever source derived, and was levied on what actually came to his hands as income, and not on the value of his property; whereas the road-cess was imposed by the local Legislature of Bengal, was not a tax on income, but on immoveable property in a certain part of India only, irrespective of whether the property was a rent-paying one or not, and the proceeds of the tax were applicable to purely local purposes.

Although the Road Cess Act contained no saving clause in favour of contracts, it did not prohibit in future the making of contracts, which should interfere with the incidence of the road-cess as directed by the Act, nor vacate contracts that might have been made before the

Digitized by Google

ROAD CESS ACT (BENGAL ACT X. OF 1871)—*contd.*

passing of the Act. In the absence of any provisions to that effect, therefore, the terms of the *kabuliat* must still govern the rights of the parties, and the agreement they had come to was not affected by the subsequent passing of the Act. SURNOMOYEE DABEE *v.* KOOMAR PURRESH NARAIN ROY. *White* and *Tottenham*, JJ...**I. L. Rep. 4 Cal. 576, 1878.**

RULE—Mode in which a Magistrate should show Cause against a.

See **Mode in which a Magistrate, &c.**

HURRO SOONDERY CHOWDHRANI... **I. L. Rep. 4 Cal. 20.**

RULES OF BOMBAY GOVERNMENT OF 1st FEBRUARY 1869—*Ultra Vires.*

See **Bombay Act I. of 1865, § 35.**

COLLECTOR OF THANA *v.* DADABHAI BOMANJI..... **I. L. Rep. 1 Bom. 352.**

RULE 149 OF THE COMMON LAW RULES OF SUPREME COURT OF BOMBAY — Application by Attorney under.

See **Attorney and Client. 1.**

ABA ISHMAIL *v.* ABA THARA... **I. L. Rep. 1 Bom. 253.**

RULES OF COURT—Rule 24 of Rules of 23rd August 1866—Bombay.

See **Power of Directors to bind Company by Bill of Exchange.**

In the matter of THE NEW FLEMING S. & W. Co. (LIMITED)...**I. L. Rep. 3 Bom. 439, 1879.**

—— Rule 4 of Rules of High Court, 22nd June 1875—Calcutta.

See **Probate. 2.**

In the Goods of SHAMACHURN MULLICK...**I. L. Rep. 1 Cal. 52.**

—— Rule 149 of the Common Law Rules of the Supreme Court of Bombay.

See **Attorney and Client. 1.**

ABA ISHMAIL *v.* ABA THARA.....**I. L. Rep. 1 Bom. 253.**

RULES OF COURT—*contd.*

—— *Madras High Court Rules 4 and 5 of the 5th of July 1866—Letters Patent (Madras), Cl. 9.*] The 4th and 5th Rules of the Madras High Court of the 5th July 1866 are within the powers conferred on that Court by the Letters Patent of 1865; and the provision of the Letters Patent, Cl. 9, relating to the admission and powers of advocates, vakils, and attorneys are fully authorized by the Stat. 24 and 25 Vict., C. 104. *In the matter of the Petition of the* ATTORNEYS. *Morgan*, C.J., *Innes* and *Kindersley*, JJ...**I. L. Rep. 1 Mad. 24, 1875.**

RYOT—Ejectment of Cultivating.

See **Partition Suit.**

SAMINDA PILLAI *v.* SUBBA REDDIAR.....**I. L. Rep. 1 Mad. 333.**

—— Right of—to hold on Payment of Assessment.

See **Partition Suit.**

SAMINDA PILLAI *v.* SUBBA REDDIAR..... **I. L. Rep. 1 Mad. 333.**

See **Rights of Mirasdars.**

FAKIR MUHAMMAD *v.* TIRUMALA CHARIAR...**I. L. Rep. 1 Mad. 205.**

SAGOTRA-SAPINDAS.

See **Hindu Law — Inheritance — Widows. 3.**

LALLUBHAI *v.* MANKUVARBAI...**I. L. Rep. 2 Bom. 388.**

SALE OF ANCESTRAL PROPERTY IN DISCHARGE OF DEBTS OF FATHER.

See **Hindu Law — Alienation of Ancestral Property. 3.**

GIRDHAREE LALL *v.* KANTOO LALL. **L. Rep 1 I. A. 321.**

SALE OF ANCESTRAL FAMILY-HOUSE IN EXECUTION OF DECREE ON MORTGAGE.

See **Hindu Law — Alienation of Ancestral Property. 1.**

BHIKHAM DAS *v.* PURA...**I. L. Rep. 2 All. 141.**

Digitized by Google

SALE OF ANCESTRAL PROPERTY IN EXECUTION OF DECREE AGAINST FATHER.

See **Hindu Law — Alienation of Ancestral Property. 3.**

GIRDHAREE LALL *v.* KANTOO LALL. **L. Rep. 1 I. A. 321.**

SALE OF ANCESTRAL PROPERTY— In Execution of Decree against Member of Undivided Family.

See **Hindu Law—Alienation of Ancestral Property. 1. 2. 3. 4. 5.**

See **Hindu Law—Undivided Family. 3. 4. 7. 8.**

See **Sale in Execution of Decree. 10. 15.**

See **Hindu Law—Liability of Ancestral Estate in the hands of the Heir for Debts of the Ancestor.**

See **Bombay Act V. of 1862. 2.**

See **Civil Procedure Code, Act VIII. of 1859, § 269.**

SALE OF ANCESTRAL PROPERTY BY FATHER DURING SON'S MINORITY—Suit to set aside a.

See **Onus Probandi. 8.**

ADURMONI DEVI *v.* CHOWDHRY SIB NARAIN KUR...**I. L. Rep. 3 Cal. 1.**

SALE FOR ARREARS OF RENT.

See **Putnee Talook.**

BRINDABUN SIRCAR CHOWDHRY *v.* BRINDABUN DEY CHOWDHRY. **L. Rep. 1 I. A. 178.**

See **Rent Suit.**

MADHO PROSHAUD *v.* PURSHAN RAM...**I. L. Rep. 4 Cal. 520.**

SALE FOR ARREARS OF REVENUE.

See **Mortgage. 3.**

RAMCHANDRA *v.* BHIMRAV...**I. L. Rep. 1 Bom. 577.**

—— Caused by One of Several Joint Owners—Suit for Damages.

See **Damages. 1.**

LALLAH RAMESSHUR *v.* LALLAH BISSEN.....**I. L. Rep. 1 Cal. 406.**

SALE FOR ARREARS OF REVENUE — *contd.*

—— Limitation to Suit to set aside—Fraud.

See infra. **2.**

—— Notice.

See **Act XI. of 1859, § 5.**

BUNWAREE LALL *v.* MOHABEER PROSHAD.....**L. Rep. 1 I. A. 89.**

—— Purchase at—by Manager of Joint Hindu Family, in his own Name.

See **Act I. of 1845, § 21.**

TOONDUN SINGH *v.* POKHNARAIN SINGH...**L. Rep. 1 I. A. 342.**

—— Right of Purchaser at—to Enhance Rent.

See **Enhancement of Rent. 1.**

PURMANUND ASRUM *v.* ROOKINEE. **I. L. Rep. 4 Cal. 793.**

—— Setting aside— after Judgment Debtor's Interest in Surplus Proceeds has been sold in Execution.

See **Sale in Execution of Decree. 17.**

RAM THUL *v.* BISESWAR LALL...**L. Rep. 2 I. A. 131.**

—— Suit to Avoid Under-Tenure by Purchaser at.

See infra. **1.**

—— Unrecorded Copartner—Purchase by.

See **Act XI. of 1859, § 53.**

ABDOOL BARI *v.* RAMDASS COONDOO.....**I. L. Rep. 4. Cal. 607.**

1. —— *Under-Tenure; Suit to avoid—Permanent Settlement — Structures and Improvements within the meaning of § 37 of Act XI. of* 1859.] In a suit to avoid an under-tenure by the purchasers at an auction sale for arrears of Government revenue, the defendants contended that the tenure was created prior to the permanent settlement, and that some portion of the lands comprised in it were covered with permanent structures and improvements, and that, accordingly, it was protected under exceptions 1 and 4 to § 37 of Act XI. of 1859; but the lower Court gave a decree to the plaintiffs and annulled the under-tenure:—

Held by *White*, J., that, notwithstanding a party may fail to show that his tenure was created prior to the permanent settlement, yet he is entitled to the benefit of the fourth exception

Digitized by Google

SALE FOR ARREARS OF REVENUE—*contd.*

in respect of any permanent structures that may be on his holding. *Brojo Soondur Biswas* v. *Gouri Persaud Roy* (S. D. A. Dec. 1852, p. 54) followed. BHAGO BIBEE *v.* RAM KANT ROY CHOWDHRY...**I. L. Rep. 3 Cal. 293, 1877.**

2. —— *Suit to set aside—Fraud—Limitation.*] Where one of several co-sharers fraudulently contrived to have an estate brought to sale for arrears under Act XI. of 1859, and purchased it *benami* of his son :—

Held, that another co-sharer aggrieved by the sale could maintain a suit to have the property reconveyed, although the period limited by § 33 of Act XI. of 1859, and Art. 14 of Sched. II. of Act IX. of 1871, for a suit to set aside the sale, had expired. Such a suit falls within Art. 95 of the said Schedule. BHOOBUN CHUNDER SEN *v.* RAM SOONDER SURMA MOZOOMDAR. *Birch* and *Mitter*, JJ.....**I. L. Rep. 3 Cal. 300, 1877.**

SALE FOR ARREARS OF TIRVAI (RENT)—Right of Official Assignee on.

See **Insolvency. 2.**

CHIMA S. MUDALLI *v.* KANDASVAMI REDDI...**I. L. Rep. 1 Mad. 59.**

SALE CONVERTIBLE INTO A MORTGAGE—Where a deed, which was on the face of it described as a mortgage, stated that the grantee was already in possession, under a previous mortgage by the grantor, of the property comprised in it, and was under the second deed to continue to receive the rents and profits thereof in liquidation of interest as far as they would go, and continued :—"If I get a boy of my liking for adoption, and make him my adopted son, I will pay you off in one lump sum the amount due under the original mortgage deed, and the money due under the second mortgage, together with interest remaining due, and redeem my share of the land, allowances, and profits aforesaid. In the event of my not adopting a son, my share of property, all *muli* land, allowances, &c., may be enjoyed by you in the same way as I did, in right of purchase for the sum, principal and interest, due to you" :—

Held, that under the deed, the grantor was not to be liable to repay the principal-money, or such balance of interest (if any) as might accrue on it, unless he adopted a son ; that no suit could have been maintained against him for

SALE CONVERTIBLE INTO A MORTGAGE—*contd.*

principal and interest by the grantee so long as the grantor remained without having made an adoption ; and that the deed, therefore, was one of a sale liable to be converted into a mortgage, and not of a mortgage liable to be converted into a sale. SUBHABHAT BABANBHAT *v.* VASUDEVBHAT SUBHABHAT.....**I. L. Rep. 2 Bom. 113.**

2. —— *Mortgage convertible into Sale—Redemption—Conditional Sale.*] The plaintiff's ancestors, on 23rd June 1858, executed a document to the defendant's ancestor which recited a previous mortgage by the former to the latter, on which the parties agreed that there were on the 23rd June 1858 Rs. 200 due by the grantors to the grantee, and contained an agreement that the grantee should pay Rs. 75 to another creditor of the grantors, and for this consideration of Rs. 275 the deed purported absolutely to sell and convey the mortgaged premises to the grantee. The grantee on the same day executed to the grantors a document reciting the sale of the mortgaged lands by the grantors to the grantee for Rs. 275, and covenanting that the grantee should reconvey to the grantors the lands, the subject of the grant, if the grantors should repay to the grantee the sum of Rs. 275 within a certain time, and providing that in default of payment within such period, the covenant for reconveyance should be void.

Held that the transaction was a sale, and not a mortgage, and that the grantors were not entitled to redeem after the expiration of the period so fixed for payment of the Rs. 275, there being no evidence nor allegation that Rs. 275 were at the date of the execution of the two documents an insufficient consideration for the sale of the land, nor any stipulation that the grantee should account for the rents of profits during his possession, or for payment of interest by the grantors on the sum of Rs. 275, either before, at, or after the expiration of the time fixed within which the land might be repurchased by the grantors, nor anything to show that the grantors remained in possession after the execution of the two documents, or that, subsequently to that time, any advances were made by the grantee to them on the security of the land ; nor anything which pointed to a right on the part of the grantee to recover from the grantors the sum of Rs. 275, or any part of it, either before, at, or after the period named for the repurchase.

Digitized by Google

SALE CONVERTIBLE INTO A MORTGAGE—*contd.*

The law as laid down in *Ramji* v. *Chinto* (1 Bom. H. C. Rep. 109) for this Presidency is still in force, and governs mortgages with clauses of conditional sale, executed before or after 1858. BAPU APAJI v. SENAVARAJI MARVADI. *Westropp*, C.J., and *West*, J.....**I. L. Rep. 2 Bom. 231, 1877.**

SALE OF DWELLING-HOUSE FOR OCCUPATION, WITHOUT THE SITE.

See **Mahomedan Law—Pre-emption. 3.**

ZAHUR v. NUR ALI...**I. L. Rep. 2 All. 99.**

SALE IN EXECUTION OF DECREE—

—Appeal by Auction Purchaser at—from Order setting aside.

See **Appeal—Civil. 22**

GOPAL SINGH v. DULAR KUAR... **I. L. Rep. 2 All. 352.**

—For Arrears of Rent—Sale of Under-Tenure—Process against other Property of Debtor.

See **Beng. Act VIII. of 1861, § 61.**

HURRISH CHUNDER ROY v. COLLECTOR OF JESSORE...**I. L. Rep. 3 Cal. 712.**

—Assignment by Purchaser at.

See **Hindu Law—Sale of Land.**

GOVIND v. GOVIND...**I. L. Rep. 1 Bom. 500.**

—Consent Decree—Right of Party not represented in Suit how affected.

See **Mahomedan Law. 1.**

ASSAMATHEN NESSA BIBEE v. ROY LUTCHMEPUT SINGH... **I. L. Rep. 4 Cal. 142.**

— Of Coparcener's Interest in the Undivided Family Estate.

See the Index heading **Alienation of Ancestral Property—by Sale in Execution of Decree against Member of Undivided Family.**

— Of Decree Charging Land—Interest in Immoveable Property.

See **Sale in Execution of Decree. 7.**

SALE IN EXECUTION OF DECREE— *contd.*

— Distribution of Sale Proceeds—Prerogative Right of Crown in respect of Court Fees.

See **Prerogative of the Crown.**

COLLECTOR OF MORADABAD v. MUHAMMAD DAIM KHAN...**I. L. Rep. 2 All. 196.**

— Formal Possession—Limitation.

See **Limitation. 12.**

KOONJO MOHUN v. NOBO COOMAR. **I. L. Rep. 4 Cal. 216.**

— Inadequacy of Price.

See **Sale in Execution of Decree. 18.**

— Irregularity not affecting the Judgment-Debtor.

See **Sale in Execution of Decree. 2.**

— Of *Khalisa Mahal* by Civil Court.

See **Sale in Execution of Decree. 8.**

— Land paying Revenue—*Khalisa Mahal.*

See **Sale in Execution of Decree. 8.**

— Liability of Purchaser at—for Government Revenue.

See **Sale in Execution of Decree. 3.**

— Lis Pendens, *Quære* whether Doctrine of, applies to a.

See **Res Judicata. 29.**

ALI SHAH v. HUSAIN BAKHSH...**I. L. Rep. 1 All. 588.**

— Material Irregularity in.

See **Sale in Execution of Decree. 6. 8. 11.**

— Money-Decree—Mortgage.

See **Sale in Execution of Decree. 4. 9.**

See **Mortgage. 40.**

GANPAT RAI v. SARUPI.....**I. L. Rep. 1 All. 446.**

— Money-Decree obtained by Mortgagee, unconnected with his Mortgage—Notice of Mortgage—Right of Purchaser.

See **Mortgage. 3.**

TUKARAM v. RAMCHANDRA...**I. L. Rep. 1 Bom. 314.**

See **Sheriff's Sale. 3.**

BHUGGOBUTTY v. SAMACHURN...**I. L. Rep. 1 Cal. 337.**

Digitized by Google

SALE IN EXECUTION OF DECREE— *contd.*

—— On Mortgage

See **Emblements.**

LAND MORTGAGE BANK *v.* VISHNU. **I. L. Rep. 2 Bom. 670.**

See **Mortgage. 1.**

SHRINGAPURE *v.* PETHE.....**I. L. Rep. 2 Bom. 662.**

—— On a Mortgage—Right of Purchaser.

See **Mortgage. 6.**

MUTHORA NATH *v.* CHUNDERMONEY...**I. L. Rep. 4 Cal. 817.**

—— Of Occupancy Rights.

See **Right of Occupancy. 2.**

ABLAKH RAI *v.* UDIT NARAIN RAI. **I. L. Rep. 1 All. 353.**

—— Order cancelling Auction on Ground of Sale for Inadequate Price—Suit to set aside.

See **Civil Procedure Code, Act VIII. of 1859, §§ 256, 257.**

SUKHAI *v.* DARYAI...**I. L. Rep. 1 All. 374.**

—— Period from which Purchaser's Title dates.

See **Sale in Execution of Decree. 3.**

—— Personal Decree against Father—Suit by Son to recover Share of Family Property purchased at.

See **Sale in Execution of Decree. 10. 15.**

—— Personal Decree against Hindu Widow—Rights of Auction Purchaser and Reversionary Heir.

See **Sale in Execution of Decree. 19.**

See **Personal Decree against a Hindu Widow.**

BAIJUN DOOBEY *v.* BRIJ BHOOKUN LALL AWASTI...**L. Rep. 2 I. A. 275; I. L. Rep. 1 Cal. 133.**

—— Postponing—Fresh Proclamation.

See **Sale in Execution of Decree. 6.**

—— Purchase-Money — Right to recover — on Sale being set aside or Decree reversed before Confirmation of Sale and Eviction of Purchaser.

See **Sale in Execution of Decree. 13. 17. 21.**

See **Sheriff's Sale. 1. 2. 4.**

SALE IN EXECUTION OF DECREE— *contd.*

—— Purchase-Money — Right to recover on Eviction of Purchaser at a—under Act VIII. of 1859.

See **Civil Procedure Code, Act X. of 1877, § 315.**

MULO...**I. L. Rep. 2 All. 299.**

—— Reversed before Confirmation.

See **Sale in Execution of Decree. 21.**

—— Of Right, Title, and Interest of Hindu Widow.

See **Sale in Execution of Decree. 19.**

—— Of Right of Occupancy Tenant.

See **Act XVIII. of 1873, § 9.**

UMRAO BEGAM *v.* LAND MORTGAGE BANK.....**I. L. Rep. 1 All. 547.**

—— On Specially Registered Mortgage Bond.

See **Sale in Execution of Decree. 5.**

—— Of Undivided Share of Member of Undivided Family—Effect of.

See **Hindu Law—Gift. 2.**

BALLABH DAS *v.* SUNDER DAS ..**I. L. Rep. 1 All. 429.**

And *see* the Index heading **Alienation of Ancestral Property—by Sale in Execution of Decree against a Member of Undivided Family.**

1. —— *Possession—Assignment.*] On a sale in execution of a decree, the property in the thing sold passes to the purchaser; and there is nothing in Hindu or English law which debars a third person from taking an assignment of such property from the auction purchaser, albeit it has never been reduced into possession by him. GOVIND RAGHUNATH *v.* GOVIND JAGOJI. *Kemball* and *Pinhey*, JJ.....**I. L. Rep. 1 Bom. 500, 1876.**

2. —— *Irregularity—Setting aside Sale—Act VIII. of* 1859, § 257.] In a suit instituted on the 7th of September 1873 to recover possession of certain property, and to eject the auction purchaser thereof at a sale in execution of a decree held on the 15th of February 1871, on the allegation that the decree in execution of which the property had been sold had been reversed, and that the sale was therefore void; it appeared that *G.* and *M.* obtained

Digitized by Google

SALE IN EXECUTION OF DECREE— *contd.*

a decree against the plaintiff on the 12th of December 1864, which was reversed on the 28th July 1865 by the District Judge, whose decree in its turn was set aside on the 5th March 1866 by the Sudder Court which ordered a new trial. On the 5th of May 1866, the District Judge affirmed the decree of the original Court. On the 3rd of December 1866, the High Court again set aside this Judge's decree and ordered a new trial. On the 14th of January 1867, the District Judge again affirmed the decree of the Court of first instance, and, no appeal being preferred, the decree became final. The decree-holders in the meantime, on the 12th June 1866, took proceedings to execute the decree of the 5th of May 1866. They renewed these proceedings on the 5th of July 1866, and again on the 2nd June 1867, referring in each instance to the decree of the 5th of May 1866. On the 7th of November 1870, they applied for the sale of the property in suit, referring in this application to the decree of the 5th of May 1866. The notification of the sale stated that the property was for sale in satisfaction of the decree of the 5th of March 1866. The sale took place on the 15th of February 1871, and on the 10th of March 1871, the judgment-debtor objected to the confirmation of the sale on the ground of the error in the application for execution, but his objections were disallowed and the sale confirmed :—

Held, that the sale ought not to be set aside, as the irregularity in applying for execution of the decree dated the 5th of May 1866 was an irregularity which did not prejudice the judgment-debtor.

Per Oldfield, J.—With reference to § 257 of Act VIII. of 1859 the suit was not maintainable. GHAZI *v.* KADIR BAKSH...**I. L. Rep. 1 All. 212, 1876, F. B.**

3. —— *Period from which Title of Purchaser dates—Confirmation of Sale—Liability of Purchaser for Government Revenue.*] The defendant became the purchaser at an execution sale of a share in an estate, in which the plaintiff held a share as zemindar and putnidar. The sale was completed on the 30th September 1872, but the defendant did not obtain possession till the confirmation of the sale on the 5th May 1873. Between the date of the sale and of its confirmation, a considerable sum became due, in respect of the whole property, for Government

SALE IN EXECUTION OF DECREE— *contd.*

revenue; and, to prevent its being sold, the plaintiff paid the whole amount of the revenue, and then sued the defendant to recover the proportion due in respect of the share purchased by her :—

Held, that the sale having been confirmed, and the defendant having obtained a certificate the interest of the judgment-debtor must be held, for the purposes of this suit, to have ceased from the date of the sale and to have become vested in the defendant, who was, therefore, the person liable to pay the Government revenue in respect of the share purchased by her; therefore, that the plaintiff was entitled to recover from her the payments which he made on account of such share, with interest at 6 per cent. from the time of such payment. BHYRUB CHUNDER BUNDOPADHYA *v.* SOUDAMINI DABEE.....**I. L. Rep. 2 Cal. 141, 1876, F.B.**

4. —— *Money-Decree — Mortgage — Covenant not to alienate.*] The owners of the property in suit mortgaged it in 1865 to the defendant by a bond which contained a personal covenant to pay the debt due, and a condition not to alienate the property until payment. In 1868, the defendant obtained a money-decree only on this bond, and became himself the purchaser of the property in suit, at a sale in execution thereof held in 1871. In 1869, the mortgagors had mortgaged the property to the plaintiff, who now sued to foreclose :—

Held, that the defendant's purchase could not prevail against or be held free from the plaintiff's claim, but that the plaintiff was entitled to a decree for foreclosure. The defendant's decree was only a money-decree, and the sale under it did not carry with it the mortgage lien, but only disposed of such rights and interests as still belonged to the judgment-debtor; and the defendant, therefore, by his purchase at the auction sale, stood in the place of his judgment debtor, and was bound by his acts, including the mortgage to the plaintiffs.

The condition in the defendant's bond against alienation to others was merely personal to him, and did not affect the right of a subsequent morgagee in enforcing his lien. *Ramu Naikan* v. *Subbaraya Mudali* (7 Mad. H. C. Rep. 229), *Momtajoodeen Mahomed* v. *Rajcoomar Dass* (14 Beng L. Rep. 408; S. C. 23 W. Rep. 187), and *Rajah Ram* v. *Bainee Madhoo* (H. C. Rep. N.

Digitized by Google

SALE IN EXECUTION OF DECREE— *contd.*

W. P. 1872, p. 81) dissented from. KHUB CHAND *v.* KALLIAN DASS...**I. L. Rep. 1 All. 240, 1876, F.B.**

Dissented from in...**I. L. Rep. 4 Bom. 57.**

See **Vol. 2, Col. 952.**

S. C. under **Parties to Suit. 1.**

See **9**, *infra.*

And *see* **Mortgage. 40.**

GANPAT RAI *v.* SARUPI...**I. L. Rep. 1 All. 446.**

5.——*Specially Registered Mortgage Bond—Act XX. of* 1866, § 53—*Decree.*] The obligees of a mortgage bond hypothecating certain immoveable property as collateral security for the repayment of the debt, which was specially registered under § 53 of Act XX. of 1866, obtained a decree against the mortgagor under the provisions of that section, which decreed their claim "against the mortgagor and the hypothecated property." The plaintiff purchased the property at a sale in execution of this decree. At the time of the sale, the defendant was in possession of the property under a mortgage dated subsequently to the specially registered mortgage. In a suit by the plaintiff to set aside the mortgage to the defendant, and for possession :—

Held, that a decree under § 53 of Act XX. of 1866, is and can only be a mere money decree, and that a sale in execution of such a decree can only give the purchaser the rights and interests of the judgment-debtor in the property hypothecated, and that such purchaser cannot claim in virtue of his lien to defeat a second mortgagee. So much of the decree as declared the property liable must be regarded as null and void for want of jurisdiction. AKHE RAM *v.* NAND KISHORE...**I. L. Rep. 1 All. 236, 1876, F. B.**

6. —— *Postponing Sale—Notice—Proclamation—Act VIII. of* 1859, § 249.] In all cases in which a sale in execution of a decree is postponed to another day, it is necessary that the formalities required by law should be gone through afresh (unless it be that they have been waived by the parties themselves). In all such cases a fresh proclamation must be made giving notice of the day to which the sale is adjourned. It may be presumed, when such notice is wanting, that there has been an absence of bidders, from which alone substantial injury to the

SALE IN EXECUTION OF DECREE— *contd.*

judgment-debtor must probably have arisen. GOOPEE NATH DOBEY *v.* ROY LUCHMEPUT SINGH BAHADUR. *Ainslie* and *Kennedy*, JJ...**I. L. Rep. 3 Cal. 542; 1 Cal. Rep. 349, 1877.**

7. —— *Sale of Decree charging Lands—Interest in Immoveable Property.*] A sale in execution of a decree against the judgment-debtors, of a decree obtained by the judgment-debtors against a third person charging lands for its satisfaction, is a sale of an interest in immoveable property, to which the provisions of Act VIII. of 1859 for the sale of immoveable property will apply. MUSSAMAT BHAWANI KUAR *v.* GULAB RAI. *Stuart*, C.J., and *Oldfield*, J...**I. L. Rep. 1 All. 348, 1877.**

8. —— *Material Irregularity—Sale by Civil Court of* Khalisa Mahal — *Act VIII. of* 1859, § 248— *Act XIX. of* 1873 § 3, *Cl.* 1.] Where, in execution of a decree, against a judgment-debtor, a Civil Court sold certain forest land, which, at the time of the sale, had been granted to and was in the possession of the judgment-debtor, as a *Khalisa Mahal*, on which, under the terms of the grant, no revenue was payable by the grantee for the first three years, during which period of exemption the sale took place, but became payable for the fourth and following years; and where the place where the sale was to take place was not described with sufficient distinctness, and the proclamation of sale was not made on the spot :—

Held, that the sale was void, both on the ground of the above irregularities, and because the sale should not have been conducted by the officer of the Civil Court, but should have been held by the Collector, the estate being land paying revenue to Government within the meaning of § 248 of Act VIII. of 1859. Because no revenue was payable at the time of actual sale, it did not follow that the estate was not a revenue-paying estate within the meaning of that section. The term "paying revenue" in § 248, is used in contradistinction to "revenue-free," and applies to all lands known as "*Khalisa*." When the land granted on such terms as in the present case is considered to be a mahal as defined in § 3, Cl. i., of Act XIX. of 1873, and subject to all conditions attaching by law to such terms, the remission of revenue for a few years on the land, will not alter its general character

Digitized by Google

SALE IN EXECUTION OF DECREE— *contd.*

as *Khalisa* or revenue-paying; the revenue still remains assessed. SHOWERS *v.* SETH GOBIND DASS. *Stuart*, C.J., and *Pearson*, J...I. L. Rep. 1 All. 400, 1877.

9. —— *Money-Decree—Mortgage—Right of Purchaser.*] The plaintiff, the obligee of a bond which hypothecated certain immoveable property as security for the repayment of the debt, and prohibited any transfer until the money was repaid, obtained a money-decree upon the bond against the obligor, and became himself the purchaser of the property at the sale in execution. Before the date of the institution of the suit the obligor leased the property to the defendant for twelve years. The sale proceeds were more than sufficient to pay the debt due on the bond. In a suit by the plaintiff to set aside the lease to the defendants, as having been made fraudulently and collusively without his knowledge with the view of depriving him of his right, and to enforce his lien under the bond:—

Held, that the sale proceeds having been sufficient to discharge the debt to the plaintiff, he could not, as auction purchaser, fall back on the collateral security for a debt which no longer existed.

Held, also, that the lease was not fraudulent or collusive. If it was prohibited by the terms of the bond, the plaintiff might have proceeded against the property hypothecated by the bond when he first instituted his suit, and possibly might have successfully impleaded the defendant. Not having done so, and his debt being satisfied he could not question the lease as being an infringement of the hypothecation of the bond.

Semble, that even if the sale proceeds had not been sufficient to satisfy the debt, the plaintiff could not, according to the principle of *Khub Chand* v. *Kalian Das* (I. L. Rep. 1 All. 240), avail himself of the collateral security to avoid the lease. BALWANT SINGH *v.* GOKARAN PRASAD. *Stuart*, C.J., and *Spankie*, J....I. L. Rep. 1 All. 434, 1877.

See 4, *supra.*

And *see* **Mortgage. 40.**

GANPAT RAI *v.* SARUPI.....I. L. Rep. 1 All. 446.

10. —— *Personal Decree against Father on Mortgage Bond—Sale of Property not included in Mortgage — Partition — Right of Sons.*] A decree for money due on a mortgage bond was

SALE IN EXECUTION OF DECREE— *contd.*

obtained against *S. D.* alone, the father of the present defendants, in a suit to which the defendants were not parties. The judgment in that suit declared that the property mortgaged was liable for the debt sued for. In execution of that decree, the property mortgaged was attached, and an application by the defendants for the release of the property having been refused, they filed a suit for partition and prayed for the release of the attached mortgage property. In that suit they obtained a decree for partition, but their prayer for the release of the mortgaged property from attachment was disallowed, on the ground that they were bound by the mortgage, the debt having been incurred for family purposes. Subsequent to the decree for partition, and when the defendants were divided from their father *S. D.*, the property in question in the present suit, which formed no part of the mortgaged property, was attached and sold in execution of the decree against *S. D.*, on the mortgaged bond, and purchased by the plaintiff's father, the sale purporting to be, as usual, of the right, title, and interest of the judgment-debtor. In a suit by the plaintiffs to recover possession of the whole of the property so sold:—

Held, that the plaintiffs had only acquired the right, title, and interest of *S. D.* in the property sold. There was nothing in the litigation on the mortgage bond to indicate that it was intended to enforce the debt against the whole of the family property as a debt due from the family. The adjudication in the partition suit only covered what was then in question, *viz.*, the mortgaged property. Because it was held in that suit that the land then attached, which did not include the property now in question, was duly attached and liable to be sold, it did not follow that other property of the family was so liable, and this notwithstanding that the securities sued upon included all such property.

Per Innes, J.—The prayer of the present defendants in their partition suit for release of their shares of the mortgaged property from attachment should have been granted. The creditor had elected to sue their father, *S.* D., alone, and whatever might be the obligations of the other members of the family to bear their share of the debt contracted by *S. D.*, that was a matter between them and him, of which the creditor could not take advantage under his decree, which was a mere money decree against *S. D.*

Digitized by Google

SALE IN EXECUTION OF DECREE— *contd.*

It might have been open to the creditor so to have framed his suit by including the other members of the family, and by asking that the debt might be declared to be a debt chargeable on the entire family, to have obtained a decree making the joint family liable in persons and property, but having failed to do so he could not afterwards seek to extend the operation of the decree beyond the proper and limited scope of it, and the Court in trying, in the partition suit, the question of the liability of the sons to discharge the debt due by their father under the decree on the mortgage bond, in effect instituted a new suit against them. *Dindyal Lal* v. *Jugdeep Narrayana Singh* (I. L. Rep. 3 Cal 198) followed. VENKATARAMAYYAN *v.* VENKATASUBBRAMANIA DIKSHATAR.....**I. L. Rep. 1 Mad. 358, 1877, F. B.**

11. —— *Material Irregularity—Act VIII. of* 1859, § 249—*Proclamation of Sale.*] The property of a judgment-debtor was proclaimed and advertised for sale on a certain day. The proclamation stated that the property to be sold was a two anna eight pie share in a certain talook. Before the day of sale a portion of the property advertised to be sold was released from attachment. No fresh proclamation was issued; but on the date of the sale, the purchasers who had assembled to bid were informed, at the time and place of sale, that a portion of the property had been released, and the sale took place on the day originally fixed:—

Held, that the omission to publish a fresh proclamation was a material irregularity. The judgment-debtor was entitled to have a proclamation, which should state accurately the property to be sold, published thirty days before the sale. The irregularity was of such a sort that very little evidence would satisfy the Court that the judgment-debtor had sustained injury by reason of it; the case was therefore remanded for the Court executing the decree to ascertain from the evidence on record, and from any further evidence that might be adduced by the parties, whether the judgment-debtor had sustained any substantial injury by reason of such irregularity. SHIB PROKASH SINGH *v.* SARDAR DAYAL SINGH. *White* and *Mitter*, JJ.....**I. L. Rep. 3 Cal. 544; 2 Cal. Rep. 260, 1878.**

12. —— *Immoveable Property—Dispossession of Third Person—Obstruction to Purchaser—Act*

SALE IN EXECUTION OF DECREE— *contd.*

VIII. of 1859, § 269—*Act X. of* 1877, §§ 318 319 334, 335.] There is no provision in the New Civil Procedure Code, Act X. of 1877, similar to that contained in § 269 of Act VIII. of 1859, which enabled the Court executing a decree to inquire into a complaint, made by a person other than the defendant, on the ground of dispossession in the delivery of possession to the purchaser of immoveable property sold in execution; and therefore the remedy of a person so dispossessed is by regular suit. In such a state of the law, it being obviously unfair for the Courts, which cannot now summarily determine the relative rights of the parties, to insist on putting an auction purchaser into possession, in spite of the resistance or obstruction of a third party having no connection with the judgment-debtor; ordinarily, officers should be directed to abstain from any act of dispossession in such a case, leaving the execution purchaser to his remedy by suit.

A., a decree-holder, purchased certain property belonging to *B.*, his judgment-debtor, at a sale in execution of his decree, and delivery of possession to him was ordered. A stranger to the suit thereupon presented a petition to the Court executing the decree, setting up a title to a moiety of the property in question, and prayed for an investigation into his right, and for recovery of possession on the ground that he had been dispossessed by *A*:—

Held, that the application could not be maintained. HARASATOOLLAH *v.* BROJONATH GHOSE. *Markby* and *Prinsep*, JJ.....**I. L. Rep. 3 Cal. 729; 1 Cal. Rep. 517, 1878.**

18. —— *Right of Purchaser to recover Purchase-Money on Sale being set aside—Fraud of Decree-Holder — Minor* — Caveat Emptor—*Costs.*] The defendant *T.* gave the defendant *H.* a bond for the payment of money by which she purported, as guardian of her minor son, to mortgage certain immoveable property of the minor. *H.* sued *T.*, in her own right and as guardian of her son, on this bond, and obtained only a money-decree against *T.* personally, in execution of which he was allowed by the Court to bring to sale the property of the minor. At this sale the property was purchased by the plaintiff with full knowledge that he was purchasing the minor's property, and without making any inquiry whether the

Digitized by Google

SALE IN EXECUTION OF DECREE— *contd.*

sale was authorized by the decree. The minor brought a suit for a declaration that the sale was invalid, and obtained possession from the plaintiff. The plaintiff then sued *H.* and *T.* to recover his purchase-money, and the costs incurred by him in defending the minor's suit, and interest:—

Held by *Pearson*, *Turner*, *Spankie*, and *Oldfield*, JJ.—That the evidence being insufficient to justify the inference that the plaintiff was in any way a party to or cognizant of the fraud of *T.*, the decree-holder, the mere fact that he knew he was purchasing the property of a minor, and did not inquire whether the sale was authorized by the decree, did not deprive him of his right to recover back his purchase-money from the decree-holder on the sale being set aside; and that, being innocent of fraud, and having purchased in the *bonâ fide* belief that the minor's property was properly saleable, he was entitled to recover his purchase-money from the decree-holder, through whose misfeasance the order for sale was obtained, the sale having been virtually set aside so far as regards the rights and interest of the minor, which fact distinguished this case from *Kelly* v. *Gobind Dass* (H. C. Rep. N. W. P. 1874, p. 168).

Held, also, that though the plaintiff was entitled to recover from the decree-holder his purchase-money and reasonable interest, he could not recover the cost of defending the minor's suit, in the absence of any guarantee for those costs from the decree-holder, as he ought not to have defended that suit.

Held, by *Stuart*, C.J.—That the bad faith of the decree-holder was immaterial, unless the plaintiff could show that he became the purchaser of the minor's property in the honest belief that it could be legally sold in execution of the decree; and that, under the circumstances of the case, and having regard to the plaintiff's own evidence, he must be taken to have had not only notice of the minority of the person whose property he purchased, but as having lent himself to a proceeding not only illegal and invalid in itself, but grossly in fraud of the minor's rights, and he was, therefore, not entitled to recover his purchase-money; and even assuming that he was not guilty of any fraud, yet, having purchased with the knowledge that the property was that of a minor, and without ascertaining whether the sale was justified by the decree, he could not recover his purchase money. MAKUNDI LAL *v.* KAUNSILA.....**I. L. Rep. 1 All. 568, 1878.**

S. C. under **Maxims—Caveat Emptor. 1.**

SALE IN EXECUTION OF DECREE— *contd.*

14. ——*Surplus Proceeds—Lien—Act VIII. of* 1859, § 271—*Priority.*] On the, 15th of January 1876, *M.* obtained a decree for money which declared a lien on certain immoveable property of the judgment-debtors created by a bond dated the 17th of July 1873. On the 21st of January 1876, *P.* obtained a decree for money against the same persons, which declared a lien on the same property created by a bond dated the 28th of September 1875. On the 13th of April 1876, the property was attached in execution of both these decrees. At this time *M.* held a decree for money against the same persons, dated the 11th of November 1875, which declared a lien on the same property created by a bond dated the 27th of October 1874. On the 2nd of June 1876, *M.* applied to the Court that the surplus proceeds of the sale-proceeds, after satisfying the decree of the 15th of January 1876, might be attached in execution of the decree of the 11th of November 1875, and be paid to him. The Court made an order accordingly. In a suit by *P.* against *M.* to recover a portion of the money paid to him under such order, on the ground that as an attaching creditor, the plaintiff was entitled to have his claim under the decree of the 21st of January 1876, satisfied in full:—

Held, that *M.*, as holder of the decree of the 11th of November 1875, was entitled to share in the sale-proceeds under § 271 of Act VIII. of 1859, as one who had, prior to an order for distribution, and before sale, taken out execution of his decree against the same judgment-debtor and not obtained satisfaction thereof, and that as his lien as well as the decree which declared it were prior in date to the lien and decree held by the plaintiff, he was entitled to share before him. MANIK SINGH *v.* PARAS RAM. *Pearson* and *Oldfield*, JJ.....**I. L. Rep. 1 All. 727, 1878.**

15. —— *Personal Decree against Father — Sale of Family Property — Suit by Son to recover his Share.*] The plaintiff's father borrowed money to enable him to sue for the recovery of certain lands, and being unable to repay it, judgment was obtained against him personally in a suit to which his son, the plaintiff, was not made a party, and the lands in suit were sold and pur-

Digitized by Google

SALE IN EXECUTION OF DECREE— *contd.*

chased by the defendant at the Court sale. The plaintiff sued to set aside the sale of one-half of those lands, on the ground that they formed his share, that he was a minor when his father incurred the debt, and that his share was not liable for debts incurred by his father :—

Held, that the decree obtained in the suit against the plaintiff's father showed that the debt was the personal debt of the plaintiff's father, and that the decree was against him personally. Under that decree, only his rights and interest in the property could be sold, and nothing beyond his rights and interests would pass to the purchaser. Even if the debt had not been a personal debt, the suit was not framed to enforce the debt against the whole property, and the plaintiff, therefore, was entitled to recover his share. *Dindiyal Lal* v. *Jagdip Narain Singh* (I. L. Rep. 3 Cal. 198) followed. VENKATASAMI NAIK *v.* KUPPAIYAN...**I. L. Rep. 1 Mad. 354, 1878, F.B.**

16. —— *Suit for Recovery of Purchase-Money*—Caveat Emptor—*Act VIII. of* 1859, § 257.] The right, title, and interest of *G.* were attached and advertised for sale, under separate orders, in execution of a decree held by *T.*, and in execution of a decree held by *P.* and *R.* The same day was fixed for the sale in execution of both decrees, and on that day, the officer conducting the sale, at first put up the property in execution of the decree of *T.*, and the property was purchased by the decree-holder. He then again put up the property for sale in execution of the decree of *P.* and *R.*, whose agent (the appellant) purchased it. The Court executing the decrees confirmed the sale in execution of *T.'s* decree, and delivered a sale certificate to the auction purchaser. It also confirmed the second sale, disallowing the appellant's objection to such confirmation, and ordered the purchase-money to be paid to the decree-holder ; but it held that as the sale to the purchaser in execution of *T.'s* decree had been confirmed and a certificate issued, it could not give possession to the purchaser in execution of *P.* and *R.*'s decree, and therefore refused to grant a certificate in respect of that sale. In a suit brought by the appellant against *P.* and *R.* to recover the purchase-money paid under the second sale :—

Held,—distinguishing the case from those in which it had been held that when the right, title, and interest of a judgment-debtor in a particular property has been sold, there is no warranty of title, and therefore that he cannot recover his purchase-money if it turn out that the judgment-debtor had no interest,—that in this case the interest advertised for sale had, immediately before the sale to the appellant, been already sold by the Court in execution of the decree of *T.*, and when that sale was confirmed the subsequent sale was practically disallowed and nullified. The Court had advertised for sale the interest of the judgment-debtor as it existed before the sale in execution of *T.'s* decree. When that sale was declared absolute, the Court could not confirm to the purchaser at the second sale the interest it had advertised for sale. The rule of *caveat emptor* did not apply, for the interest offered for sale was the interest advertised, and if the first sale had been disallowed, that interest would have passed to the purchaser at the second sale ; but when the first sale was confirmed, the second sale could not be carried out, for the interest advertised had been already sold, and the appellant, therefore, was entitled to recover the purchase-money.

The provisions of § 257 of Act VIII. of 1859 apply to applications made under § 256, and to those only.

Held, therefore, that as the appellant objected to the confirmation of the sale to himself, on the ground that the Court was not competent to confirm a sale which had by its previous order been nullified, and not on any of the grounds mentioned in § 256, the appellant was not precluded by § 257 Act VIII. of 1859 from maintaining the suit. The officer conducting the sales was not bound to sell the property once for all in execution of both decrees, and his selling such property separately was therefore not any irregularity in the conduct of the sale. THE COURT OF WARDS *v.* GAYA PERSAD. *Turner* and *Spankie*, JJ.....**I. L. Rep. 2 All. 107, 1879.**

S. C. under **Parties to Suit 9.**

17.——*Suit to recover Purchase-money—Revenue Sale set aside, after Judgment-Debtor's Interest in Surplus Proceeds had been sold in Execution.*] The appellant's right, title, and interest in a sum of Rs. 35,000 deposited with the Collector as his share of the surplus proceeds of an estate sold for arrears of revenue, was, on the 25th November 1867, attached in execution of a money decree, and, on the 18th February 1868, sold to the respondents for Rs. 8,000, which

Digitized by Google

SALE IN EXECUTION OF DECREE— *contd.*

sum was thereupon paid into Court and distributed among the attaching and other execution creditors. The revenue sale was subsequently, at the instance of the appellant, ordered to be set aside, and thereupon the estate was restored to the appellant and his co-sharers; and the purchase-money restored to the purchasers, including the said Rs. 35,000, which the Collector, pending the litigation, had refused to pay the respondents.

In a suit by the respondents to recover the said sum of Rs. 8,000, with interest from the date of payment thereof into Court :—

Held (reversing the decision of the High Court), that the suit must be dismissed. What the respondents bought was the appellant's interest in the surplus proceeds, subject to the contingency of his succeeding in his suit to set aside the revenue sale (of which the respondents had notice, at least, before the sale was confirmed), in which event that interest would become *nil*. There was no warranty or contract on the appellant's part. The sale was had under proceedings *in invitum* and against his express protest. The parties were at arm's length. The appellant was free to prosecute his suit; the respondents free to enforce their rights should he fail, to the uttermost farthing. What they bought, then, was the chance of getting Rs. 35,000 for Rs. 8,000, dependent on the happening or non-happening of a certain event. Although the appellant had benefited by the Rs. 8,000 paid by the respondents, there was no obligation on his part, express or implied, to repay the same. Such payment was voluntary, against the will of the appellant, and made in the course of a speculative transaction, in which the interest of the appellant was directly opposed to that of the respondents.

It is not in every case in which a man has benefited by the money of another, that an obligation to repay that money arises. The question is not to be determined by nice considerations of what may be fair or proper according to the highest morality. To support such a suit there must be an obligation, express or implied, to repay. It is well settled that there is no such obligation in the case of a voluntary payment by *A.* of *B.*'s debt. Still less would the action lie when the money had been paid, as in this case, against the will of the party for whose use it is supposed to have been paid. RAM TUKUL SINGH *v.* BISSESWAR LALL SAHOO...**L. Rep. 2 I. A. 131; 15 Beng. L. R. 208; 23 W. R. 305, 1875.**

SALE IN EXECUTION OF DECREE— *contd.*

See **Co-Sharers of Patni Taluk.**

MOHESH CHUNDER BANNERJEE *v.* RAM PURSONO CHOWDHRY... **I. L. Rep. 4 Cal. 539.**

See **Right to recover Government Revenue paid during Wrongful Possession.**

TILUCK CHUND *v.* SOUDAMINI DASI.....**I. L. Rep. 4 Cal. 566.**

See **Setting aside Sale of Superior Tenure, Effect of.**

SREENARAIN BAGCHEE *v.* SMITH... **I. L. Rep. 4 Cal. 807.**

18. —— *Review of Order disallowing Objection to—Material Error in Notification—Inadequacy of Price—Waiver of Irregularity.*] In execution of a decree against the appellant, his estate was attached, and a notice of sale was issued fixing the sale for the 5th of August 1868. The notification of sale stated the Government revenue to be Rs. 3,146, instead of Rs. 8,146. On the application of the appellant "that a postponement of one month be granted, *the attachment and the notification being maintained*," it was ordered that the postponement be granted, and that in the event of the judgment-debtor not paying the amount decreed, the estate should be sold, "*without the issue of a second notification of sale.*"

The estate was eventually, on the 9th of September 1872, sold to the respondent, under the execution. On the 1st October 1872, the appellant, under the provisions of § 256 of Act VIII. of 1859, made objections to the sale, one of such objections being the erroneous statement in the notification of sale as to the amount of Government revenue. The Subordinate Judge overruled the objections, but did not confirm the sale, under § 257 of Act VIII. of 1859. The appellant then applied to the Subordinate Judge for a review of his decision; and the Subordinate Judge, without giving notice to, or summoning, the respondent, granted the review, and set aside the sale on the ground of the above material error, and of inadequacy of price. Subsequently the Subordinate Judge refused to confirm the sale or grant a certificate,

Digitized by Google

SALE IN EXECUTION OF DECREE— *contd.*

The High Court, upon an application by the respondent under Stat. 24 and 25 Vict., C. 104, § 15, considered the objections insufficient, and directed the Subordinate Judge to confirm the sale.

Held, on appeal to the Privy Council, that though the fact that the sale had been effected at a low price would not of itself be a ground for refusing to confirm the sale, yet that the above error in specifying the amount of the Government revenue was an irregularity for which the sale might have been set aside, provided the judgment-debtor had satisfied the Court that he had sustained a substantial injury in consequence of it (see § 249, Act VIII. of 1859); but that the above petition of the respondent amounted to an admission on his part that the notification was correct, or that, at any rate, there was no such mistake or irregularity as would be likely to mislead, and that the High Court was right in ordering the sale to be confirmed. GIRDHARI SINGH *v.* HURDO NARAIN SINGH.....**L. Rep. 3 I. A. 230, 1876.**

19. —— *Right, Title and Interest of Hindu Widow.*] In 1859, *K.* brought a suit against the appellant, the widow of *A.*, upon a bond executed by *A.* in 1854, and recovered a decree against the appellant on the 24th of December 1859. In 1863, the share of a *jalkar*, which had belonged to *A.*, was sold in execution of this decree and purchased by *K.* At the time of the sale, the share in the *jalkar* belonged to the two minor sons of *A.*, and was in the possession of the appellant on their behalf. On the death of the two sons, unmarried and without issue, *A.* was in possession as their heir. In the heading of the decree of the 24th of December 1859, *A.* was described as the widow of *A.* and mother of two minor sons. The decree was simply a money decree directing "the defendant to pay to the plaintiff the amount in claim with interest and costs," and recited that the suit was brought to recover money due under a bond. Neither the sale certificate, proclamation, nor advertisement were produced, but a *perwana* from the Munsiff to the Nazar was produced which referred to the sale-proclamation, and in which the parties were described merely as "decree-holder" and "judgment-debtor," and described the interest in the property intended to be sold as the "right and possession of the debtor" in the share of the *jalkar*. In a suit brought by the representative of *K.* to obtain possession of the property purchased by *K.* at the sale in execution of his decree:—

SALE IN EXECUTION OF DECREE— *contd.*

Held, that *K.* did not by his purchase acquire the interest of the minor sons in the property sold. Though *K.*—knowing that the debt for which the decree was passed was a debt of *A.*, and that the appellant had at the time of sale no interest in the property except as representing her minor sons—may have intended to purchase the rights of the minor sons, yet the question was to be decided on the documents which would properly come to the notice of a purchaser who had not *K.*'s special means of knowledge, and regard must be had to the inferences which such a purchaser might reasonably and legitimately draw therefrom. Taking the *perwana* as correctly representing the interest advertised to be sold as that of the debtor, a reference to the decree would not show an intending purchaser that the suit was on a bond of the appellant's husband, or that he was the real debtor, and the intending purchaser would not, therefore, be justified in concluding that *A.* was the real debtor, or that the interest put up for sale was that of *A.*'s minor sons.

The doctrine that, where a party sells property of which he is not the owner, but afterwards becomes the owner, he is bound to make good the sale out of his subsequently acquired interest, does not apply to a case where the sale is compulsory, being made through the Court at the instance of the execution-creditor. ALUKMONEE DABEE *v.* BANEE MADHUB CHUCKERBUTTY. *White* and *Mitter*, JJ...**I. L. Rep. 4 Cal. 677; 3 Cal. Rep. 473, 1878.**

See **Personal Decree against a Hindu Widow.**

BAIJUN DOOBEY *v.* BRIJ BHOOKUN ..... **L. Rep. 2 I. A. 275; I. L. Rep. 1 Cal. 133.**

20. —— *Decree against Representative of Deceased Mahomedan — Right of Purchaser.*] *B. R.*, a Mahomedan, had incurred debts for repairs to a house of which he owned an 8-anna share, and after his death his daughter *S.*, who was entitled to a 5-anna share of his estate, and who had taken charge of his estate and obtained a certificate under Act XXVII. of 1860

Digitized by Google

SALE IN EXECUTION OF DECREE— *contd.*

directed further repairs to be done to the house. The debts thus incurred by *B. R.* and *S.* not having been paid, the creditor brought a suit against *S.*, as representing her father's estate, to recover them, and having obtained a decree, the house was sold in execution thereof, and purchased by *H.* in May 1874. *B. R.* at his death left also a sister who was entitled to a 3-annas share of his estate, but who had been for some years absent on a pilgrimage at Mecca. On her return, she, in January 1874, sold her interest in the house to *M.* In a suit by *M.* against *S.* and *H.* for possession of the share so sold to him :—

Held, that *S.* did not represent the whole estate of *B. R.*, and the share purchased by the plaintiff did not pass under the execution sale to *H.*; the plaintiff, therefore, was entitled to recover. HENDRY *v.* MUTTY LALL DHUR. *Garth*, C. J., and *Birch*, J ..I. L. Rep. 2 Cal. 395, 1876.

21. —— *Sale under a Decree reversed in Appeal before Confirmation—Execution—Jurisdiction — Purchase — Title.*] The plaintiff's title to the land in dispute was derived from a purchaser at a Court's sale. The decree under which the sale took place was reversed in appeal. The reversal took place subsequently to the sale, but before the order was made confirming the sale :—

Held, that from the moment the decree was reversed, the Court which made it ceased to have jurisdiction to take any further steps to execute it. Though the Court, when it confirmed the sale, was probably not informed that its decree had been reversed, and the purchaser was probably ignorant of it, yet the act of the Court, in completing the sale, was none the less without jurisdiction, and, being without jurisdiction, could confer no title.

If a decree be reversed after a sale under it has become absolute, and a certificate has been granted to the purchaser, the title of the purchaser is not affected by the reversal of the decree.

A purchaser is bound to satisfy himself as to the jurisdiction of the Court to order a sale, and this obligation continues until the sale is complete. Before he applies to the Court to confirm the sale, and grant him a certificate, the purchaser ought to ascertain that the decree under which the sale was ordered is still in existence. BASAPPA MALAPPA *v.* DHUNDYA SHIVLINGYA. *Melvill* and *Kemball*, JJ...I. L. Rep. 2 Bom. 540, 1878.

SALE OF FIXTURES IN EXECUTION OF DECREE OF SMALL CAUSE COURT.

See **Fixtures.**

MILLER *v.* BRINDABUN.....I. L. Rep. 4 Cal. 946.

SALE OF GOODS — *Implied Warranty of Quality—Transfer of Property in Goods—Contract Act IX. of* 1872, §§ 18, 19, 78, 86, 117, 118 *—Ordinary Diligence—Destruction of Goods by Fire after Sale.*] The plaintiff sold by sample to the defendants the whole contents of a certain *golah* of a shop at Kallygunge, containing 975 maunds of "*Pauah Padi Balam*" rice, at a certain rate. The defendants paid the plaintiff earnest-money, and agreed to remove the whole rice, after weighing, on or before a certain date. Subsequently to this contract the defendants transferred their rights to one *P.*, whose servant, on the 16th of September, weighed out of the *golah* in question 130 maunds, and took delivery thereof, paying the plaintiff Rs. 1,000. But he subsequently refused to take delivery of the rest, alleging that the quality of the rice was inferior to that contracted for. The *golah* was subsequently accidentally burned down, and the plaintiff brought this suit to recover the balance of the purchase-money after deducting the payments made, and the amount realized at a sale of the damaged rice remaining after the fire. The defendants contended that (1) the property in the rice did not pass by the contract, and, therefore, that the risk was with the plaintiffs; and (2) that the contract was by sample, and, the quality of the rice in the *golah* was inferior to that of the sample. The lower Appellate Court held that there had been a breach of warranty in respect of the quality of the rice contracted to be sold. While agreeing with the Court of first instance that the sale was by sample, the District Judge held, that even if the sale had not been by sample, yet that, having regard to the contract price and the price of rice ruling in the market, there was an implied contract that the rice sold should be of a particular kind, *viz.*, *Chaitre*

Digitized by Google

SALE OF GOODS—*contd.*

Panchi Padi, and that the rice in the *golah* was not of the description good *Chaitro Panchi Padi*, and dismissed the suit:—

Held, that there was no error in law in the finding of the District Judge in respect of the implied warranty (*see* Contract Act IX. of 1872, § 113, cl. *b*).

Held, also, that under § 78 of the Contract Act the ownership in the rice passed to the purchasers, because the contract for the sale was "of ascertained goods," the latter having paid the earnest-money and taken delivery of a portion of it. Nor did the fact that the rice remained to be weighed affect the question. So far as the vendors were concerned nothing remained to be done on their part to the rice sold "for the purpose of ascertaining the amount of the price." The rice was to be weighed for the satisfaction of the purchasers. The ownership in the rice sold, therefore, passed to the purchasers; consequently, under § 86, the risk of loss also passed to them. And the omission by the plaintiffs to take the course open to them under § 107, of selling the rice at the defendants' risk on the refusal of the latter to take delivery, did not affect the plaintiffs' right to recover the balance of the purchase-money, the breach of warranty as to the quality of the rice sold being no answer to the suit, except for the abatement of the contract price.

The sale having been completed, and the ownership with the risk in the rice sold having passed to the purchasers, the latter could only rescind the sale if the breach of the warranty would bring the case within the provisions of § 19 of the Contract Act; and the defendants were precluded from resting their defence on that section by reason of its first exception, because they resided near Kallygunge, and might have discovered the truth with ordinary diligence. SHOSHI MOHUN PAL CHOWDHRY *v.* NOBO KRISHTO PODDAR. *Mitter* and *Prinsep*, JJ. ... **I. L. Rep. 4 Cal. 801, 1878.**

SALE BY GUARDIAN—Certificated and Uncertificated—Guardian—Powers of.

See **Alienation by Guardian. 2.**

RAM CHUNDER *v.* BROJONATH... **I. L. Rep. 4 Cal. 729.**

See **Mortgage. 30. 31.**

ABHASEE BEGUM *v.* MOHARANEE RAJROOP...**I. L. Rep. 4 Cal. 33.**

SALE BY GUARDIAN—*contd.*

DEBI DUTT *v.* SUBOODRA BIBI... **I. L. Rep. 2 Cal. 283.**

See **Mahomedan Law—Sale by Guardian.**

HASAN ALI *v.* MEHDI HUSSAIN .. **I. L. Rep. 1 All. 533.**

See **Review. 10.**

MADHO DASS *v.* RUKMAN SERAH SINGH.....**I. L. Rep. 2 All. 287.**

—— Unauthorized—Purchaser's Lien for Purchase-Money expended in Payment of Mortgage.

See **Lien. 1.**

KUVARJI *v.* MOTI HARIDAS...**I. L. Rep. 3 Bom. 234.**

—— *Act XL. of* 1858.] The mother and natural guardian of a Hindu minor, though not appointed under Act XL. of 1858, when acting *bonâ fide*, and under the pressure of legal necessity, may sell his ancestral lands, to pay ancestral debts and to provide for the maintenance of the minor. SOONDER NARRAIN *v.* BENNUD RAM. *Jackson* and *Tottenham*, JJ. ..**I. L. Rep. 4 Cal. 76, 1878.**

Note.—The property was of small value, and the suit was by a purchaser from the minor of the right to dispute the sale; but *Jackson*, J., at p. 78, says—"It is contended that no guardian acting as what is called in this judgment (under appeal) a natural guardian can exercise higher powers than a guardian appointed under the law; that is to say, the power of a natural guardian is limited to granting leases for a period not exceeding five years, and such guardian must apply to the Court for sanction even in cases of legal necessity. I am not aware of any sanction of the law for that contention * * * and it appears to me that no such position is warranted by law."

SALE BY HINDU WIDOW—of Immoveable Property of Husband to pay his Time-barred Debt—Valid for her Life.

See **Hindu Law—Alienation by Widow. 5.**

BAHANNA *v.* PARBHU...**I. L. Rep. 2 Bom. 67.**

Digitized by Google

SALE OF HINDU WIDOW'S RIGHT, TITLE, AND INTEREST, IN EXECUTION OF PERSONAL DECREE AGAINST HER—Rights of Reversionary Heir and Execution Purchaser.

See **Sale in Execution of Decree. 19.**

BAIJUN DOOBEY *v.* BRIJ BHOOKUN LALL AWASTY...**L. Rep. 2 I. A. 275; I. L. Rep. 1 Cal. 133.**

SALE OF LAND.

See the Cases under **Hindu Law—Sale of Land.**

—— In the Mofussil under Power of Sale in Mortgage Deed.

See **Mortgage. 32. 33.**

PITAMBER *v.* VANMALI.....**I. L. Rep. 2 Bom. 1.**

JAGJIVAN *v.* SHRIDHAR.....**I. L. Rep. 2 Bom. 252.**

SALE OF LIQUORS—Illicit.

See **Illicit Sale of Liquors.**

EMPRESS *v.* SEYMOUR.....**I. L. Rep. 1 All. 630.**

EMPRESS *v.* DHARAMDAS...**Ibid. 635.**

EMPRESS *v.* MAHINDRA LAL...**Ibid. 638.**

SALE OF MORTGAGED PROPERTY FOR ARREARS OF GOVERNMENT REVENUE OR ZEMINDARY RENT—Right of Mortgagee to prevent—by Payment thereof—Charge on the Property.

See **Co-Sharers of Patni Talook.**

MOHESH CHUNDER *v.* RAM PURSONO.....**I. L. Rep. 4 Cal. 539.**

SALE OF MORTGAGED PROPERTY TO DIFFERENT PERSONS—Liability to Contribution, when Debt paid by One.

See **Contribution. 2.**

MOTHOORANATH *v.* KRISTOKUMAR. **I. L. Rep. 4 Cal. 869.**

SALE UNDER MORTGAGE WITH POWER OF SALE—EFFECT OF— Right of Second Mortgagee to Purchase.

See **Mortgage. 34.**

RAJAH KISHENDATT RAM *v.* RAJAH MUMTAZ ALI KHAN...**L. Rep. 6 I. A. 145, 160.**

SALE OF PATNI TENURE FOR ARREARS OF RENT—Suit to set aside—Publication of Notice, Date of.

See **Beng. Reg. VIII. of 1879, § 8, Cl. 2.**

MATUNGEE CHURN *v.* MOORRARY MOHUN...**I. L. Rep. 1 Cal. 175.**

SALE BY SHERIFF UNDER WRIT OF FIERI FACIAS—Right of Purchaser at—to recover Purchase-Money on Eviction on Sale being declared Void.

See **Sheriff's Sale. 1. 2. 4.**

DORAB ALLY KHAN *a.* KHOJAH MOHEEOODDEEN.....**I. L. Rep. 1 Cal. 55; I. L. Rep. 3. Cal. 806; L. Rep 5. I. A. 116.**

FRAMJI *v.* HORMASJI...**I. L. Rep. 2 Bom. 258.**

——Right of Purchaser without notice of Mortgage at—held at Instance of Mortgagee.

See **Sheriff's Sale. 3.**

BHUGGOBUTTY *v.* SHAMACHURN... **I. L. Rep. 1 Cal. 337.**

SALE OF SUPERIOR TENURE—Effect of Setting aside.

See **Setting aside Sale of Superior Tenure.**

SREENARAIN BAGCHEE *a.* SMITH. **I. L. Rep. 4 Cal. 807.**

SALE BY TRUSTEE OF TRUST PROPERTY.

See **Breach of Trust.**

MANIKLAL *v.* MANCHARSHA... **I. L. Rep. 1 Bom. 269.**

SALE OF TRUSTEESHIP—Custom.

See **Alienation of Right of Management of a Pagoda.**

RAJAH VURMAH VALIA *v.* RAVI VURMAH MUTHA...**L. Rep. 4 I. A. 76.**

Digitized by Google

SALE OF UNDER-TENURE—Growing Crops, unless excepted specially or by Custom, pass on.

See **Beng. Act VIII. of 1869, § 66.**

AFATOOLLA SIRDAR *v.* DWARKA NATH MOITRY...**I. L. Rep. 4 Cal. 814.**

1. —— *Certificate of Sale—Execution of Decree.*] *B. B.* held one anna of a ten-anna share in a *jamma* which had been purchased by *B. L. H.*, and had paid rent to the *Kutkinadar* on such one-anna share, and had his name registered as owner of such one-anna share in the *sherista* of the *Kutkinadar*. The *Kutkinadar* having afterwards brought a suit against *B. L. H* alone for arrears of rent of the entire ten annas and having obtained a decree, and in execution of this decree put up to sale the entire ten-anna share :—

Held, that as the sale certificate related only to the share of *B. L. H.*, *B. B.*'s one-anna share did not pass under such sale. BHUGEERUTH BERAH *v.* MONEERAM BANNERJEE. *Birch* and *Mitter*, JJ.....**I. L. Rep. 4 Cal. 865, 1879.**

2. —— *Suit to cancel Under-Tenure—Act IX. of* 1871, § 1, *Sched. II., Art.* 120—*Beng. Act VIII. of* 1869, § 16.] Under Bengal Act VIII. of 1869, § 16, at the time when the purchaser acquires the tenure, all under-tenures created by the former holder of the tenure are *ipso facto* avoided by the sale; and the purchaser and those claiming under him are, by Art. 120 of Sched. II. of Act IX. of 1871, entitled to bring their suit for the purpose of realizing the subject-matter of those under-tenures within twelve years from the time of the auction sale. The only interpretation to be put on the word "avoid" in Arts. 119 and 120, Sched. II. of Act IX. of 1871, is to do something in exercise of the right of avoidance. UNNODA CHURN DASS BISWAS *v.* MOTHURA NATH DASS BISWAS. *Garth*, C.J., *Jackson* and *Pontifex*, JJ.....**I. L. Rep. 4 Cal. 860; 4 Cal. Rep. 6, 1879.**

3. —— *Mortgage—Right to Notice.*] The right, title, and interest of *A.* in a certain under-tenure was sold in execution of a decree for rent obtained against him by *B.*, and purchased by *B.* himself. *B.* at the time held another decree against *A.* for arrears of rent for the same under-tenure. *C.*, to whom *A.* had previously mortgaged the under-tenure, thereupon, having foreclosed the mortgage, instituted a suit for possession against *A.* and *B.*, and obtained a decree for possession.

SALE OF UNDER-TENURE—*contd.*

After this decree, but before *C.* got actual possession, *B.* caused the under-tenure to be sold in execution of his other decree against *A.*, and again became himself the purchaser. *C.*, having shortly afterwards obtained possession under his decree, was dispossessed by *B.*, who took possession through the Court under his second purchase. *C.* thereupon instituted proceedings under § 269, Act VIII. of 1859, in which he was successful, and consequently regained possession. In a suit brought by *B.* to set aside these proceedings and for an adjudication of title :—

Held, that *B.* had a good title to the under-tenure, and that he was not bound, before bringing the under-tenure to sale under his second decree, to give notice to *C.* LAIDLEY *v.* GUNNESS CHUNDER SAHOO. *Garth*, C.J., and *McDonnell*, J.....**I. L. Rep. 4 Cal. 438, 1878.**

SALE OF UNDIVIDED SHARE OF MEMBER OF UNDIVIDED FAMILY.

See the Index heading **Alienation of Ancestral Property.**

SALE BY SOME OF THE WIDOWS OF DECEASED MAHOMEDAN TO SATISFY DECREES OBTAINED AGAINST THEM AS HIS REPRESENTATIVES — WHEN BINDING ON MINOR HEIR.

See **Mahomedan Law—Infant.**

HAMIR SINGH *v.* MUSSAMAT ZAKIA...**I. L. Rep. 1 All. 57.**

SALT EARTH, COLLECTION OR POSSESSION OF.

See **Madras Regulation I. of 1805, § 18.**

REG. *v.* BYLA ATCHI...**I. L. Rep. 1 Mad. 278.**

SALVAGE LIEN.

See **Mortgage. 22.**

MORAN *v.* MITTU 'BIBEE...**I. L. Rep. 2 Cal. 58.**

SAMANODAKA.

See **Hindu Law—Inheritance—Father's Sister's Son.**

THAKOOR JEEBNATH SINGH *v.* THE COURT OF WARDS ..**L. Rep. 2 I. A. 163.**

Digitized by Google

SAN MORTGAGE.

See **Bombay Act V. of 1862. 1.**

RANCHODAS *v.* RANCHODAS...**I. L. Rep. 1 Bom. 581.**

SANAD—Construction of.

See **Construction of Sanad.**

See **Grant of Talook.**

BHOOBUN MOHINI DEBIA *v.* HURRISH CHUNDER CHOWDHRY... **I. L. Rep. 4 Cal. 23.**

—— Ownership in Soil when granted by.

See **Construction of Sanad. 1.**

RAVJI N. MANDLIK *v.* DADAJI BAPUJI DESAI...**I. L. Rep. 1 Bom. 523.**

—— Reformation of.

See **Act I. of 1869. 2.**

WIDOW OF SHUNKUR SAHAI *v.* RAJAH KUSHI PERSHAD...**L. Rep. 4 I. A. 198.**

SANAD TO WIDOW AND HER HEIRS.

See **Act I. of 1869, § 22, Cl. 11.**

BRIJ INDAR *v.* RANEE JANKI KOER. **L. Rep. 5 I. A. 1.**

SANCTION TO ADOPT—Service *Watan*—Government Sanction Unnecessary.

See **Hindu Law—Adoption. 14.**

NARHAR *v.* NARRAYAN.....**I. L. Rep. 1 Bom. 607.**

SANCTION OF THE COURT—Act X. of 1866, § 175—Transfer of Assets to New Company.

See **Company—Winding up. 1.**

In re THE FLEMING S. & W. Co. (LIMITED) ..... **I. L. Rep. 3 Bom. 299.**

SANCTION OF THE HIGH COURT—For Trial of a Suit for Land in Sonthal Parganas.

See **Sonthal Parganas.**

KALIPROSHAD RAI *v.* MEHER CHANDRO ROY...**I. L. Rep. 4 Cal. 222.**

SANCTION TO PROSECUTE.

See **Execution of Decree. 24.**

In re JAGJIVAN NANABHAI...**I. L. Rep. 1 Bom. 82.**

SANCTION TO PROSECUTE—*contd.*

—— Appeal from Order granting or refusing.

See **Presidency Magistrate's Act IV. of 1877, § 41.**

JANOKEY NATH ROY...**I. L. Rep. 2 Cal. 466.**

And *see* **Sanction to Prosecute. 1.**

—— Offence committed in Court of Magistrate, 1st Class—Sanction refused by such Magistrate—District Magistrate, and not Sessions Court, may grant.

See **Sanction to Prosecute. 6.**

—— For an Offence committed by a Public Servant as such.

See **Sanction to Prosecute. 4.**

—— For Perjury or Forgery Committed in Court of Magistrate, 1st Class.

See **Sanction to Prosecute. 5.**

—— For Perjury or Forgery committed in Revenue Court.

See **Sanction to Prosecute. 3.**

—— For Perjury committed in Court of Subordinate Judge.

See **Sanction to Prosecute. 4.**

—— Power of Subordinate Courte to question.

See **Sanction to Prosecute. 2.**

—— Not Proceeded under—Power of District Magistrate to proceed without Complaint.

See **Criminal Procedure Code, Act X. of 1877, § 142. 1.**

EMPRESS *v.* NIPCHA...**I. L. Rep. 4 Cal. 712.**

—— Public Servant.

See **Sanction to Prosecute. 4.**

IMPX. *v.* LAKSHMAN ..**I. L. Rep. 2 Bom. 481.**

—— Refusal to grant—by Court before which Offence committed, does not prevent Superior Court from granting.

See **Sanction to Prosecute. 1.**

—— Under § 211, Penal Code, authorizes Charge under § 192.

See **Criminal Procedure Code, Act X. of 1872, § 142. 1.**

EMPRESS *v.* NIPCHA...**I. L. Rep. 4 Cal. 712.**

Digitized by Google

SANCTION TO PROSECUTE—*contd.*

1 —— *Criminal Procedure Code, Act X. of 1872, §§ 468, 469—Appeal.*] If the discretionary power conferred by §§ 468 and 469 of the Criminal Procedure Code (Act X. of 1872) is exercised and sanction accorded, the law gives no appeal from such order, and there being no appeal the High Court cannot interfere on motion in the nature of an appeal. But the refusal of one Court to exercise its power does not deprive the other Courts of the right to exercise the same power. If the Court before which the alleged offence is committed refuses to exercise its power, the application to the superior Court is in the nature of an original application, and not of an appeal. It is an application to one of two or more Courts which are vested with independent powers of sanction. In placing a restriction on the right of prosecution in respect of certain offences, the Legislature has not confined the power of sanction to the Court before which the offence is committed, but has conferred it on that Court, and any other Court to which that Court is subordinate, and the sanction accorded by any one of those Courts satisfies the restriction. A sanction given by any one of the Courts empowered under the Criminal Procedure Code (Act X. of 1872) cannot be disturbed by a superior Court, and where sanction is refused by one of those Courts, the refusal does not deprive the other Courts of the discretion given to them.

Per Turner, C.J. (Offg.), *Pearson* and *Oldfield*, JJ.—The words of § 469 of the Criminal Procedure Code (Act X. of 1872) do not admit of the suggestion that there are two or more Courts with independent powers, and that if one refuses, the other can grant sanction. The words, that a complaint "shall not be entertained against a party to such proceedings except with the sanction of the Court in which the document was given in evidence, or of some other Court to which that Court is subordinate, mean, that the Court to which such Court is subordinate may, by virtue of its superiorty, grant the sanction withheld by the lower Court. Sanction once given by the Court to which the first Court is immediately subordinate cannot be withheld by any Court superior to that Court. When no sanction has ever been applied for in the Court below, it may be given by the High Court as the superior of all the Courts; and so, where no sanction has been granted by the first, it may be granted by the second Court. There is no appeal from one Court to the other. But

SANCTION TO PROSECUTE—*contd.*

an application may be made on what is known as the miscellaneous side of the superior Court, and sanction, if not already given, may be granted.

Per Spankie, J.—Sanction given by any one Court cannot be disturbed by a superior Court, and when sanction is refused by one of those Courts, the refusal does not deprive the superior Courts of the discretion given to them. BARKAT ULLAH KHAN *v.* RENNIE.....**I. L. Rep. 1 All. 17, 1875.**

2. —— *Penal Code, §§ 182, 211—Power of Deputy Magistrate to question Sanction.*] A Deputy Magistrate has no power to question an order made by his superior, sanctioning a prosecution under §§ 182 and 211 of the Penal Code.

Whether it was rightly or wrongly made is not for the Subordinate Court to inquire into. It should accept the sanction as valid, and leave the accused to question it before a competent Court, if so advised. EMPRESS *v.* IRAD ALLY. *Ainslie* and *Broughton*, JJ....**I. L. Rep 4 Cal. 869; 4 Cal. Rep. 413, 1879.**

3. —— *Offence against Public Justice—Revenue Courts—Subordination of Revenue Court to High Court.*] The appellants having given false evidence and used a forged document in the course of the trial of a suit in the Deputy Collector's Court, brought to recover arrears of rent, the plaintiff applied to the Collector for sanction to prosecute them; and the Collector endorsed on the petition the following order:—"There is no rule of practice as to giving sanction in revenue cases, sanction is being given in criminal cases; the applicant is at liberty to bring the complaint in the Criminal Court separately; there is no need for sanction." Accepting this as a sanction, the plaintiff prosecuted the defendants to conviction:—

Held, by *Stuart*, C.J.—That a Revenue Court is a Civil Court within the meaning and intent of §§ 468 and 469 of the Criminal Procedure Code, Act X. of 1872, which include any Court established for the administration of Civil Justice, as distinguished from a Criminal Court.

The sanction, therefore, of that Court was necessary.

But the Collector's endorsement on the petition was not a sanction within the meaning of § 470 of the Criminal Procedure Code.

His Lordship inclined to the opinion that the words "at any time" in that section were intended

Digitized by Google

SANCTION TO PROSECUTE—*contd.*

to mean at any time during trial, and that such sanction could not be granted after trial and conviction, and thought that the High Court would not be justified in giving sanction at that stage, even if the Revenue Courts were subordinate to the High Court within the meaning of §§ 468 to 470 of the Criminal Procedure Code; on which point his Lordship entertained grave doubts, leaning, however, to the opinion that as to jurisdiction, Revenue Courts were not subordinate to the High Court.

By *Pearson* and *Straight*, JJ., (*Spankie*, J., doubting),—That a Revenue Court is a Civil Court within the meaning of §§ 468 and 469 of the Criminal Procedure Code.

By *Pearson*, *Spankie* and *Straight*, JJ.—That the Collector's endorsement was not a sanction to prosecute; and that under the words "at any time" in § 470 of that Code sanction to prosecute cannot be given after the trial and conviction of an accused person.

Held, by the Judge making the reference to the Full Bench (*Straight*, J.), on the case being returned to him that the accused persons having been prosecuted without the sanction required by §§ 468 and 469 of the Criminal Procedure Code, all the proceedings were invalid, and must be quashed, and the accused must be retried, after obtaining sanction to prosecute from the Collector. EMPRESS *v.* SABSUKH...**I. L. Rep. 2 All. 533, 1879.**

4.—— *Act X. of* 1873, § 466.—*Sanction of Prosecution by Government or its Deputy*—Mahalkari.] The scope of § 466 of the Criminal Procedure Code (Act X. of 1872) extends to all acts ostensibly done by a public servant, *i.e.*, to acts which would have no signification except as acts done by a public servant; therefore, a *Mahalkari* charged with fabricating the proceedings of a case purporting to have been held before himself, could not be tried on such a charge without the sanction specified in that section.

The first paragraph of § 466 is intended to apply, at least chiefly, to the cases of persons specially responsible to Government, such as accountants, who have failed in their duty; and the second paragraph is directed to persons professing to exercise certain authority, and with that pretext doing an act which is impeached by a subject on the ground of its being wholly unwarranted, or of an excess or impropriety of some kind.

SANCTION TO PROSECUTE—*contd.*

A *Mahalkari* falls within the first paragraph of that section, and a sanction for his prosecution by the District Magistrate (for the above alleged offence) is sufficient. A prosecution commences when the complaint is made, the reception of the complaint being a stage of the judicial proceedings towards a conviction. The subordination spoken of in § 468 of the Criminal Procedure Code (Act X. of 1872) is the general subordination, irrespective of special considerations of convenience or otherwise, which induced the Legislature to provide a direct appeal to the High Court in certain matters of exceptional importance. For the purpose, therefore, of sanctioning a prosecution under this section, the Court of the Subordinate Judge is subordinate to that of the District Judge, and not to the High Court, although the subject-matter of the litigation in the former Court exceeds Rs. 5,000, and an appeal lies direct to the High Court from the decision of that Court in that matter. IMPX. *v.* LAKSHMAN HARI. *West* and *Pinhey*, JJ.....**I. L. Rep. 2 Bom. 481, 1877.**

S. C. under **Commencement of Prosecution.**

5.—— *Act X. of* 1872, § 468—*Sanction to Prosecute—Relative Position of a Magistrate, 1st Class, District Magistrate, and Session Judge.*] For the purposes of § 468 of the Criminal Procedure Code (Act X. of 1872) a Magistrate of the 1st Class is subordinate to the Magistrate of the District; a sanction given by the latter to prosecute a person for intentionally giving false evidence before the former is therefore legal and sufficient, although the former had refused to give such sanction himself.

Semble, the Court of Session has no power, either when sitting in appeal from, or trying a case committed to it by a Magistrate of the 1st Class, to grant a sanction for the prosecution for the offence of false evidence or forgery committed in the Court of the Magistrate. IMPX. *v.* PADAMANABHA PAI. *Melvill* and *Pinhey*, JJ...**I. L. Rep. 2 Bom. 384, 1877.**

6.—— *Act X. of* 1872, § 468—*Sanction to Prosecute—Relative Position of a Magistrate of the First Class, the Magistrate of the District, and the Court of Session.*] *Held* (*Oldfield*, J., dissenting) that for the purposes of § 468 of the Criminal Procedure Code (Act X. of 1872) a Magistrate of the First Class is subordinate to the Magistrate of the District, and consequently an application for sanction to prosecute a person

Digitized by Google

SANCTION TO PROSECUTE—*contd.*

for intentionally giving false evidence before the former may, where such sanction is refused by him, be made to the latter, and not to the Court of Session, which has not the power to give such sanction. *In the matter of the Petition of* GUR DAYAL...**I. L. Rep. 2 All. 205, 1879, F.B.**

SANIASIS—Inheritance among.

See **Hindu Law — Inheritance—Saniasis.**

MADHO DAS *v.* KAMTA DAS.....**I. L. Rep. 1 All. 539.**

"SANTAN SRENI."

See **Grant of Talook.**

BHOOBUN MOHINI *v.* HURISH CHUNDER...**L. Rep. 5 I. A. 138; I. L. Rep. 4 Cal. 23.**

SAPINDAS.

See **Hindu Law — Inheritance—Father's Sister's Son.**

THAKOOR JEEBNATH SINGH *v.* THE COURT OF WARDS...**L. Rep. 2 I. A. 163.**

—— *Gotraja.*

See **Hindu Law — Inheritance—Widow. 3.**

LALLUBHAI *v.* MANKUVARBAI...**I. L. Rep. 2 Bom. 388.**

SAPINDA RELATIONSHIP.

See **Hindu Law — Inheritance—Widow. 3.**

LALLUBHAI *v.* MANKUVARBAI...**I. L. Rep. 2 Bom. 388.**

SARANJAM—*Partition of—Pensions Act.*] A *Saranjam* is ordinarily impartible, and *semble*, a pension granted in lieu of a resumed *Saranjam* is so likewise. The provisions of the Pensions Act XXIII. of 1871 would prevent a Civil Court from declaring such a pension to be partible, unless the Collector should authorize it to do so. And the fact that the Collector has permitted a suit for maintenance out of the pension, does not afford ground for presuming that he authorizes a suit for partition of the allowance. RAMCHANDRA S. VAGH *v.* SAKHARAM G. VAGH. *Melvill* and *Pinhey*, JJ...**I. L. Rep. 2 Bom. 346, 1877.**

SEBAIT—Power of—to bind the Idol's Estate.

See **Dewuttur. 1. 2.**

PROSUNNO KUMARI *v.* GOLAB CHAND.....**L. Rep. 2 I. A. 145.**

KOONWUR DOORGANATH ROY *v.* RAM CHUNDER SEN...**L. Rep. 4 I. A. 53; I. L. Rep. 2. Cal. 341.**

SCHEME—Charity—Cy-près—Right of Residuary Legatee claiming Share of Residue to open.

See **Will. 11.**

MAYOR OF LYONS *v.* ADVOCATE GENERAL OF BENGAL.....**L. Rep. 3 I. A. 32; I. L. Rep. 1 Cal. 303.**

SEAL OF CORPORATION—Contract without—when Valid.

See **Madras Act III. of 1871. 3.**

GOODRICH *v.* VENKANNA.....**I. L. Rep. 2 Mad. 104.**

SEALING UP IMMATERIAL PART OF DOCUMENTS INSPECTED.

See **Inspection. 3.**

HEERALALL RUKHT *v.* RAM SURUN LALL.....**I. L. Rep. 4 Cal. 835.**

SECOND APPEAL.

See also **Special Appeal.**

—— In cases Cognizable by Small Cause Court.

See the cases under **Small Cause Court, Mofussil.**

—— From Judgment *Ex Parte* in Appeal.

See **Appeal—Civil. 28.**

MADALATHA...**I. L. Rep. 2 Mad. 75.**

—— Objection as to Insolvency of Plaintiff —First taken in.

See **Appeal—Civil. 25.**

SADODIN *v.* SPIERS..**I. L. Rep. 3 Bom. 437.**

—— From order in Execution.

See **Appeal—Civil. 27-29.**

—— From Order for Return of Plaint.

See **Appeal—Civil. 26.**

Digitized by Google

SECOND MORTGAGEE—Right of—to purchase at Sale under Power of Sale.

See **Mortgage. 34.**

RAJAH KISHENDATT *v.* RAJAH MUMTAZ ALI...**L. Rep. 6 I. A. 145, 160.**

SECONDARY EVIDENCE—Beng. Reg. XX. of 1812, § 2, Cl. 5.

See **Mahomedan Law—Gift. 2.**

AMEEROONISSA *v.* ABEDOONISSA. **L. Rep. 2 I. A. 87.**

—— OfConfession defectively recorded—Act X. of 1872, §§ 122, 346.

See **Evidence. 12. 13.**

EMPRESS *v.* MANNOO TAMOOLEE. **I. L. Rep. 4 Cal. 696.**

REG. *v.* SHIVA...**I. L. Rep. 1 Bom. 219.**

See **Criminal Procedure Code, Act X. of 1872, § 122. 2.**

EMPRESS *v.* RAMANJIYA.....**I. L. Rep. 2 Mad. 5.**

——Of Unregistered Deed of Partition.

See **Evidence. 18.**

KACHUBHAI *v.* KRISHNABHAI... **I. L. Rep. 2 Bom. 635.**

SECURITY—Appeal from Order requiring—from Grantee of Certificate to collect Debts—Act XXVII. of 1860.

See **Appeal—Civil. 4. 16.**

MONMOHINEE *v.* KHATTER GOPAUL.....**I. L. Rep. 1 Cal. 127.**

RUKMIN.....**I. L Rep. 1 All. 287.**

SECURITY BOND—For Performance of Decree of Appellate Court on Stay of Execution.

See **Civil Procedure Code, Act VIII. of 1859, § 338.**

SHIVLAL *v.* APAJI...**I. L. Rep. 2 Bom. 654.**

—— *Surety—Execution—Act VIII. of* 1859, §§ 204 *and* 342.] A bond given before the decree as security for costs under § 342 of Act VIII. of 1859 may be enforced in a summary way against the surety by proceedings in execution. *Ram Kishen Dass* v. *Hurkhoo Singh* (7. W. Rep. 329) and *Gujendro Narain Roy* v. *Hemanginee Dassee* (13 W. Rep. 35), where it was held that § 204 of Act VIII. of 1859 did not apply to parties who have become sureties after the decree, are clearly distinguishable. CHUTTERDHAREE LALL *v.* RAMBELASHEE KOER. *Ainslie* and *Kennedy*, JJ...**I. L. Rep. 3 Cal. 318; 1 Cal. Rep. 347, 1877.**

SECURITY FOR COSTS—Attorney's Right to Contract for.

See **Attorney and Client. 2.**

MONOHUR DOSS *v.* ROMONAUTH LAW...**I. L. Rep. 3 Cal. 473.**

——Bond for—Enforcement of, against Surety in Execution Proceedings.

See **Security Bond.**

CHUTTERDHAREE *v.* RAMBELASHEE...**I. L. Rep. 3 Cal. 318.**

——Practice—Residence.

See **Civil Procedure Code, Act X. of 1877, § 380.**

MAHOMED SHUFFLI *v.* LALDIN ABDULLA.....**I. L. Rep. 3 Bom. 227.**

1 —— *Act X. of* 1877, § 549—*Extending Time.*] Where the Appellate Court demands from an appellant security for costs, the Court may extend the time within which such security must be deposited if the application for such extension is made before the expiry of the time within which it was ordered that the deposit should be made; it cannot do so afterwards; and if such security is not furnished within the time ordered, it is imperative on the Court to dismiss the appeal. HAIDRI BAI *v.* THE E. I. Ry. Co. *Turner*, C.J. (Offg.), and *Pearson*, J...**I. L. Rep. 1 All. 687, 1878.**

2. —— *Practice — Appeal.*] Mere poverty is no ground for requiring an appellant to give security for the costs of the appeal. MANEKJI LIMJI MANCHERJI *v.* GOOLBAI. *Westropp*, C.J., and *Sargent*, J.....**I. L. Rep. 3 Bom. 241, 1878.**

SECURITY, DEFAULT IN DEPOSIT OF—Dismissal of Appeal to Privy Council for.

See **Appeal to Privy Council. 4.**

THAKOOR KAPILNATH SINGH *v.* THE GOVERNMENT.....**I. L. Rep. 1 Cal. 142.**

Digitized by Google

SECURITY FOR GOOD BEHAVIOUR.

See **Whipping Act VI. of 1864, §§ 2 and 3.**

EMPRESS *v.* PARTAB...**I. L. Rep. 1 All. 666.**

—— *Act X. of* 1872, § 505.] On a requisition by the High Court, a Magistrate is bound to state the grounds on which he fixed the amount of security.

A person from whom security for good behaviour is demanded should have a fair chance afforded him of complying with the required conditions of security. The amount of security should be fixed on just and reasonable grounds, and should not be excessive. EMPRESS *v.* DEDAR SIRCAR. *Ainslie* and *McDonnell*, JJ...**I. L. Rep. 2 Cal. 384; 1 Cal. Rep. 95, 1877.**

SECURITY TO KEEP THE PEACE—Cannot be required on Conviction of Criminal Intimidation by Threat to bring False Charges.

See **Criminal Procedure Code, Act X. of 1872, § 489.**

EMPRESS *v.* RAGHUBAR ..**I. L. Rep. 2 All. 351.**

SECURITY PENDING APPEAL — For Mesne Profits and Interest, subsequent to Decree, though not provided for in Decree—Estoppel.

See **Mesne Profits. 1.**

SADASIVA PILLAI *v.* RAMALINGA PILLAI...**L. Rep. 2 I. A. 219.**

SECURITY FOR STAY OF EXECUTION—Deposit of Money and Jewels.

See **Execution of Decree. 4.**

SHEO GHOLAM SAHOO *v.* RAHUT HOSSEIN...**I. L. Rep. 4 Cal. 6.**

SELF-ACQUIRED PROPERTY.

See **Oudh Proclamation of 1858, para. 8. 1.**

HURPERSHAD *v.* SHEO DYAL...**L. Rep. 3 I. A. 259.**

—— Burden of Proof.

See **Onus Probandi. 4.**

VEDAVALLI *v.* NARAIN.....**I. L. Rep. 2 Mad. 16.**

SELF-ACQUIRED PROPERTY—*contd.*

—— Education out of Joint Funds.

See **Hindu Law—Self-acquired Property.**

PAULIEM VALLOO CHETTY *v.* PAULIEM SOORYAH CHETTY...**L. Rep. 4 I. A. 109.**

—— Grant of Village in Inam jointly to Members of Undivided Family.

See **Hindu Law — Undivided Family. 1.**

RADHABAI *v.* NARARAV.....**I. L. Rep. 3 Bom. 151.**

—— Gift of — to One Son to Exclusion of Others— Valid.

See **Hindu Law—Gift. 1.**

SITAL *v.* MADHO.....**I. L. Rep. 1 All. 394.**

SELF-DEFENCE.

See **Land held by Joint Owners.**

EMPRESS *v.* RAJCOOMAR SINGH... **I. L. Rep. 3 Cal. 573.**

SENTENCE — Aggregate — on Conviction on Several Charges measures Right of Appeal.

See **Appeal—Criminal. 3.**

REG. *v.* RAMA BHIVGOWDA...**I. L. Rep. 1 Bom. 223.**

—— Aggregate—Offence made up of Parts.

See **Criminal Procedure Code, Act X. of 1872, § 454. 1.**

EMPRESS *v.* BUDH SINGH...**I. L. Rep. 2 All. 101.**

—— Confiscation under § 49, Act XXI. of 1856 no Part of.

See **Criminal Procedure Code, Act X. of 1872, § 222. 1.**

EMPRESS *v.* BAIDANATH DASS... **I. L. Rep. 3 Cal. 366.**

—— Enhancement of.

See **Enhancement of Sentence.**

ANON.....**I. L. Rep. 1 Mad. 54.**

—— Imprisonment in Default of Payment of Fine where Fine only inflicted.

See **Criminal Procedure Code, Act X. of 1872, § 309. 1.**

REG. *v.* MUHAMMAD SAIB ..**I. L. Rep. 1 Mad. 277.**

Digitized by Google

SENTENCE—*contd.*

—— Imprisonment in Default of Payment of Fine cannot be added to Substantive Sentence for purpose of Appeal.

See **Presidency Magistrate's Act IV. of 1877, § 167. 1.**

JOTHARAM DAVAY...**I. L. Rep. 2 Mad. 30.**

—— Previous Conviction.

See **Penal Code, § 75.**

EMPRESS *v.* MEGHA...**I. L. Rep. 1 All. 687.**

—— Separate—for Separate Offences.

See **Conviction on Several Charges. 2.**

EMPRESS *v.* RAMESHAR RAI...**I. L. Rep. 1 All. 379.**

—— Of Transportation in Case of Offence punishable with Transportation for Life, or Imprisonment for Term of Years.

See **Penal Code, § 59.**

REG. *v.* NAIADA.....**I. L. Rep. 1 All. 43.**

—— Whipping—Previous or Subsequent Sentence of Nature described in Act VI. of 1864, § 7, renders Whipping Illegal.

See **Whipping Act VI. of 1864, § 7. 1.**

ANON.....**I. L. Rep. 1 Mad. 56.**

—— Whipping—Dishonest Receipt of Stolen Property—Previous Conviction of Theft.

See **Whipping Act VI. of 1864, §§ 2 and 3. 1.**

EMPRESS *v.* PARTAB...**I. L. Rep. 1 All. 666.**

SEPARATE BUSINESS CARRIED ON BY WIFE.

See **Married Women's Property Act III. of 1874.**

ALLUMUDDY *v.* BRAHAM.....**I. L. Rep. 4 Cal. 140.**

SEPARATE CHARGES FOR DISTINCT OFFENCES.

See **Criminal Procedure Code, Act X. of 1872, §§ 453, 454.**

EMPRESS *v* DONONJOY BARAJ.....**I. L. Rep. 3 Cal. 540.**

SEPARATE ENJOYMENT OF THEIR SHARES BY CO-WIDOWS.

See **Hindu Law — Inheritance — Widows. 2.**

SRI GAJAPATHI NILAMANI *v.* SRI GAJAPATHI RADHAMANI..**I. L. Rep. 4 I. A. 212; I. L. Rep. 1 Mad. 290.**

SEPARATE ESTATE.

See **Compromise. 2.**

HITAM SINGH *v.* UJAGAR SINGH ..**I. L. Rep. 1 All. 651.**

—— Impartible Zemindary transferred by Family Arrangement to Younger Brothers of Undivided Family—Succession of Widow thereto as Separate Estate.

See **Hindu Law—Separate Property. 1.**

PERIASAMI *v.* PERIASAMI.....**L. Rep. 5 I. A. 61; S. C. I. L. Rep. 1 Mad. 312.**

SEPARATE MAINTENANCE—Right of Hindu Widow to demand.

See **Hindu Law—Maintenance of Widow. 2. 3. 7. 11.**

RANGO VINAYAK *v.* YAMUNABAI...**I. L. Rep. 3 Bom. 44.**

KASTURBAI *v.* SHIVAJIRAM...**I. L. Rep. 3 Bom. 372.**

NARAYANBAV *v.* RAMABAI...**I. L. Rep. 6 I. A. 114.**

SAVITRIBAI *v.* LAXMIBAI...**I. L. Rep. 2 Bom. 570.**

—— Wife's Right to.

See **Hindu Law— Maintenance of Wife. 1. 2. 3.**

SIDDLINGAPA *v.* SIDAVA...**I. L. Rep. 2 Bom. 624–634.**

KASTURBAI *v.* SHIVAJIRAV...**I. L. Rep. 3 Bom. 372, 382.**

SEPARATE OFFENCES — Fabricating False Evidence—Voluntarily Assisting in Concealing Stolen Property.

See **Conviction on Several Charges. 2.**

EMPRESS *v.* RAMESHAR RAI...**I. L. Rep. 1 All. 379.**

—— Separate Trial for.

See **Criminal Procedure Code, Act X. of 1872, § 452.**

REG. *v.* HANMANTA...**I. L. Rep. 1 Bom. 610.**

Digitized by Google

SEPARATE PROPERTY.

See **Compromise. 2.**

PITAM SINGH *v.* UJAGAR SINGH. **I. L. Rep. 1 All. 651.**

See **Hindu Law — Separate Property.**

PERIASAMI *v.* PERIASAMI.....**L. Rep. 5 I. A. 61; I. L. Rep. 1 Mad. 312.**

SEPARATE PROPERTY OF MARRIED WOMAN—Parsi.

See **Married Woman's Separate Property. 1.**

DHANJIBHAI *v.* NAVAZBAI...**I. L. Rep. 2 Bom. 75.**

—— Land purchased with Sale Proceeds of Legacy to Sole and Separate Use.

See **Married Woman's Separate Property. 2.**

HURST *v.* MUSSOORIE BANK...**I. L. Rep. 1 All. 762.**

BERESFORD *v.* HURST...**Ibid. 772.**

SEPARATE PROPERTY OF WIFE—Decree against.

See **Married Women's Property Act III. of 1874.**

ALLUMUDDY *v.* BRAHAM.....**I. L. Rep. 4 Cal. 140.**

SEPARATE RESIDENCE OF WIDOW NOT GENERALLY A BAR TO HER RIGHT TO MAINTENANCE.

See **Hindu Law—Maintenance of Widow. 2. 3. 7. 11. 14.**

SEPARATE SENTENCES.

See **Criminal Procedure Code, Act X. of 1872, § 454.**

EMPRESS *v.* BUDH SINGH ...**I. L. Rep. 2 All. 101.**

See **Offence made up of Several Offences.**

EMPRESS *v.* RAM ADHIN...**I. L. Rep. 2 All. 139.**

—— For Exposure of Child with Intent to abandon, and Culpable Homicide for Death caused by Abandonment, cannot be inflicted.

See **Conviction on Several Charges. 3.**

EMPRESS *v.* BANNI...**I. L. Rep. 2 All. 349.**

SEPARATE SENTENCES—*contd.*

—— Fabricating False Evidence, and Voluntarily assisting in Concealing Stolen Property.

See **Conviction on Several Charges. 2.**

EMPRESS *v.* RAMESHAR RAI...**I. L. Rep. 1 All. 379.**

SEPARATE SHARE OF RENT — Suit for—by One Co-Sharer— Colluding Co-Sharers—Unpaid Balance of Rent.

See **Co-Sharers of Land. 3.**

JADU DASS *v.* SUTHERLAND ..**I. L. Rep. 4 Cal. 556.**

SEPARATE SUIT—Moneys Unduly Realized in Execution—Recovery of.

See **Execution of Decree. 6.**

PARTAB SING *v.* BENI RAM...**I. L. Rep. 2 All. 61.**

SEPARATE SUITS FOR ARREARS OF RENT.

See **Co-Sharers of Land. 1.**

DOORGA PROSHAD *v.* JOY NARAIN. **I. L. Rep. 4 Cal. 96.**

GANI MAHOMED *v.* MORAN...**Ibid.**

SEPARATE TRIAL — For Separate Offences.

See **Criminal Procedure Code, Act X. of 1872, § 452.**

REG. *v.* HANMANTA...**I. L. Rep. 1 Bom. 610.**

—— *Confession by One Accused to Police Officer exculpating Another Accused.*] When a Judge, on reading the depositions before trial, sees that a confession made by one accused person to a police officer is likely to be offered in evidence on behalf of another accused, it would be an important matter for his consideration whether it would not be desirable that the accused should be separately tried. REG. *v.* PITAMBER JINA. *Westropp*, C. J.....**I. L. Rep. 2 Bom. 61, p. 64.**

SEPARATED HALF-BROTHER — —Right of—to Succeed—Full Sister preferred to.

See **Hindu Law — Inheritance — Sister. 1.**

SAKHARAM S. ADHIKARI *v.* SITABAI.....**I. L. Rep. 3 Bom. 353.**

Digitized by Google

SERVANT—PLEDGE BY—OF GOODS LEFT IN HIS CUSTODY.

See **Contract. 15.**

BIDDOMOYE *v.* SITTARAM...**I. L. Rep. 4 Cal. 497.**

SERVICE LANDS—Right to resume or assess—on Cessation of Service.

See **Ghatwali Tenure.**

LEELANUND SINGH *v.* THAKOOR MUNRUNJUN SINGH.....**I. L. Rep. 3 Cal. 251.**

See **Resumption. 2.**

KEVAL *v.* TALUKDARI SETTLEMENT OFFICER...**I. L. Rep. 1 Bom. 586.**

SERVICE OF NOTICE OF ENHANCEMENT—On One Member of Joint Hindu Family, owning Tenure, Sufficient.

See **Bengal Act VIII. of 1869, § 14. 1.**

NOBODEEP CHUNDER SHAHA *v.* SONARAM DASS...**I. L. Rep. 4 Cal. 592.**

—— When Unnecessary.

See **Bengal Act VIII. of 1869, § 14. 2.**

NISTARNI *v.* BONOMALI...**I. L. Rep. 4 Cal. 941.**

SERVICE OF NOTICE OF FORECLOSURE—Reg. XVII. of 1806, § 8.

See **Mortgage. 13. 14.**

NORENDUR NARAIN *v.* DWARKA LAL...**L. Rep. 5 I. A. 18; I. L. Rep. 3 Cal. 397.**

BANK OF HINDUSTAN, CHINA, AND JAPAN *v.* SHOROSHIBLA DEBEE. **I. L. Rep. 2 Cal. 311.**

SERVICE OF NOTICE OF SALE.

See **Beng Reg. VIII. of 1819, § 8, Cl. 2.**

RAM SABUK BOSE *v.* MONMOHINI DOSSEE...**L. Rep. 2 I. A. 71.**

SERVICE OF NOTICE OF SALE FOR ARREARS OF RENT — Defective Service "Sufficient Plea."

See **Beng. Reg. VIII. of 1819, § 8. 1.**

GOUREE LALL *v.* JOODHISTEER...**I. L Rep. 1 Cal. 359.**

SERVICE TENURE.

See **Chakeran Lands.**

HURROGOBIND RAHA *v.* RAMRUTNO DEY...**I. L. Rep. 4 Cal. 67.**

SERVICE WATAN—Sanction of Government to adopt.

See **Hindu Law—Adoption. 14.**

NARHAR *v.* NARRAYAN.....**I. L. Rep. 1 Bom. 607.**

1. —— *Successive Life Tenants—Alienation of Service Lands by Incumbent—Adverse Possession—Limitation.*] "It does not appear on the face of the report of the case of *Kuria* v. *Gururav* (9 Bom. H. C. Rep. 282) whether there had been alienation by the plaintiff's ancestor of the *vatan* lands or not. If there had been an alienation, and the alienor had lived, say, ten out of the twenty years during which the defendants were in possession, we can well understand how the decision then made was arrived at. If *A.*, being the incumbent of a service *vatan*, have alienated it, *B.*, his heir, though more than twelve years may have elapsed between such alienation and the death of *A.*, would be entitled to recover the *vatan*, inasmuch as *A.*'s alienation would, under Bombay Reg. XVI. of 1827, § XX., Cl. 1 and 2, be invalid as against his heirs; but the prohibition against alienation in that Regulation did not extend to an alienation for any period not exceeding the lifetime of the *vatandar*. If a conveyance by an hereditary officer purported to give the alienee a greater estate than one for the life of the alienor, the Court would under the Regulation, have cut it down to an estate for his life. The heir's title to the land would not accrue until the death of *A.* (the alienor), and the possession of the alienee would not be regarded as adverse to the heir, inasmuch as it would be a possession in no wise inconsistent with his title so long as the incumbent *A.* lived. But from the moment of *A.*'s death the possession would be adverse to *B.*, and if *B.* suffered twelve years from that event to elapse without bringing his suit to recover the land, we think not only *B.* himself, but also *B.*'s heir, would be barred by the law of limitation applicable to this case (Act XIV. of 1859). To hold otherwise would be to put an end to the law of limitation altogether as to *vatans* appendant to hereditary offices." *Per Cur.* in BABAJI *v.* NANA. *Westropp*, C.J., and *West*, J.....**I. L. Rep. 1 Bom. 535, p. 536, 1876.**

Digitized by Google

SESSIONS CASE.

See **Revival of Prosecution. 2.**

EMPRESS *v.* HARRY DAYAL KARMOKAR...**I. L. Rep. 4 Cal. 16.**

—— *Act X. of* 1872, §§ 4, 296.] The appellant, after his discharge by a Magistrate on a charge under § 457 of the Penal Code, was committed to the Sessions Court by order of the Sessions Judge, under § 296 of the Criminal Procedure Code, upon charges under §§ 380 and 457 of the Penal Code.

Held by the Full Bench (*Spankie* and *Oldfield*, JJ., dissenting), that the commitment was illegal, and that the "sessions cases" referred to in § 296 are sessions cases triable exclusively by the Court of Session. EMPRESS *v.* KANCHAN SINGH...**I. L. Rep. 1 All. 413, 1877.**

SESSIONS JUDGE — Power of — to admit Convicted Person to Bail, where no Appeal lies.

See **Criminal Procedure Code, Act X. of 1872, § 390.**

REG. *v.* THAKUR PARSHAD...**I. L. Rep. 1 All. 151.**

—— Relative Position of—to Magistrate, First Class, and District Magistrate, for purpose of § 468, Act X. of 1872—Sanction to Prosecute.

See **Sanction to Prosecute. 6.**

GUR *v.* DAYAL ..**I. L. Rep. 2 All. 205.**

SESSIONS JUDGE—JURISDICTION OF —Power to commit to itself Cases not triable exclusively by Court of Sessions—Act X. of 1872, §§ 231, 471, 472.

See **Jurisdiction. 16. 16a.**

SET-OFF—Of Costs against Mortgage Money —Solicitor's Lien.

See **Mortgage. 38.**

BRIJNATH DASS *v.* JUGGERNATH DASS...**I. L. Rep. 4 Cal. 742.**

—— Money paid for Government Revenue during Wrongful Possession.

See **Right to recover Government Revenue paid during Wrongful Possession.**

TILUCK CHAND *v.* SOUDAMINI DASI..... **I. L. Rep. 4 Cal. 566.**

SET-OFF—*contd.*

1. —— *Lambardar—Co-Sharer—Profits—Revenue.*] The *jama* of a mahal in which the defendant was the lambardar, and the plaintiff a co-sharer, was reduced by the Collector in 1864. In 1870 the Government disallowed the reduction, and directed the difference to be recovered for the previous six years. The amount was made good by the defendant in 1874 out of the profits of the years from 1870 to 1874 which he had retained. In a suit by the plaintiff to recover his share of the profits for those years :—

Held (*Spankie*, J., dissenting), that the defendant was entitled to be allowed the payment made by him in liquidation of the Government demand for the arrears of revenue. He was the agent of the co-sharers to make collections, and after payment of the revenue to divide the profits, and was entitled to have recourse to the collection of the years from 1870 to 1874 to discharge the arrears of revenue. There is nothing in the revenue law which restricts a lambardar, or other co-sharer who makes collections, to discharge arrears of revenue out of the collections of the particular year in which the arrear may accrue due. UDAI SINGH *v.* JAGAN NATH..... **I. L. Rep. 1 All. 135, 1876, F. B.**

2. —— *Act X. of* 1877, § 111—*Mortgage—Compensation for Waste by Mortgagee.*] Under § 111 of the Civil Procedure Code (Act X. of 1877), it is only an ascertained sum of money legally recoverable that can be the subject of set-off, and it is necessary that in such claim both parties fill the same character as they fill in the plaintiff's suit, the claim must be certain and determinate and actually due, and in the same right and of the same kind.

Therefore, in a suit by a usufructuary mortgagee against the mortgagor to recover the money due under the mortgage, the mortgagor cannot set off against the plaintiff's claim a sum claimed by him as compensation for damages to the property mortgaged caused by acts of waste committed by the mortgagee. RAGHU NATH DASS *v.* ASHRAF HUSAIN KHAN. *Pearson* and *Oldfield*, JJ...**I. L. Rep. 2 All. 252, 1879.**

SETTING ASIDE AWARD—Miscarriage of Arbitrators—Acquiescence.

See **Arbitration. 7.**

CHOWDHRY MURTAZA HOSSEIN *v.* MUSST. BIBI BECHUNNISSA. **L. Rep. 3 I. A. 209.**

Digitized by Google

SETTING ASIDE DEEDS—Onus Probandi —*Suit for Confirmation of Possession—Heirship —Declaratory Decree.*] In a suit for setting aside deeds, some evidence ought to be given by the plaintiff in order to impeach the deeds he seeks to set aside; and he is not entitled, merely on proof of heirship to the person executing the deeds, to throw the burden on the defendant claiming under the deeds, to show a better title.

Where a suit is brought for confirmation of possession and the setting aside of deeds by a person alleging himself to be in possession and to be heir, and he proves his heirship and that the deeds ought to be set aside, but fails to prove possession; the decree cannot be for confirmation of possession, but it should direct the deeds to be set aside, and should not be limited to a declaration of the plaintiff's title as heir. TACOORDEEN TEWARRY *v.* NAWAB SYED ALI HOSSEIN KHAN...**L. Rep. 1 I. A. 192; 13 Beng. L. R. 427; 21 W. R. 340, 1874.**

S. C. under **Pardanashin Woman. 2.**

SETTING ASIDE EX-PARTE DECREE.

See **Civil Procedure Code, Act X. of 1877, § 83.**

MIRZA BEBANEE *v.* SYAD HOOSEIN. **I. L. Rep. 2 Bom. 449.**

SETTING ASIDE SALE IN EXECUTION OF A DECREE—For Breach of Express Warranty of Title.

See **Sheriff's Sale. 4.**

FRAMJI *v.* HORMASJI...**I. L. Rep. 2 Bom. 258.**

—— Right of Purchaser to recover Purchase Money on.

See **Sheriff's Sale. 1. 2. 4.**

DORAB ALLY KHAN *v.* ABDOOL AZIZ...**I. L. Rep. 5 I. A. 116; I. L. Rep. 3 Cal. 806.**

FRAMJI *v.* HORMASJI...**I. L. Rep. 2 Bom. 258.**

See **Sale in Execution of Decree. 13. 21.**

MAKUNDI LAL *v.* KAUNSILA.....**I. L. Rep. 1 All. 568.**

BASAPPA *v.* DUNDAYA...**I. L. Rep. 2 Bom. 540.**

SETTING ASIDE SALE OF SUPERIOR TENURE, EFFECT OF—*Right of Holder of Subordinate Tenure—Purchaser at Revenue Sale—Right to recover Purchase-Money — Implied Contract.*] The plaintiffs were *chahar-patnidars* of certain lands in a certain *turruff*. The *patni* on which their tenure was dependent was sold for arrears of revenue, and purchased by *T.*, from whom the plaintiffs, in order to avoid eviction, took a new *dar-patni* of the antire *turruff* within which their *chahar-patni* had been included. Thereupon the Land Mortgage Bank, having a decree against the plaintiffs sold the entire *turruffs* in execution, and the defendant became the purchaser at the execution sale. Subsequently, the sale of the *patni* for arrears of revenue was set aside, and all the *chahar-patni* and other intermediate tenures came again into force. In a suit by the plaintiffs to recover possession as *chahar-patnidars*, from the defendant, alleging that whatever rights the latter acquired, as purchaser at the execution sale, were brought to an end when the revenue sale was set aside:—

Held, that the plaintiffs were entitled to succeed, and that the defendant could not insist that the plaintiffs, before they could recover possession of the *chahar-patni*, ought to be put on terms and compelled to repay him his purchase-money or any part of it. He had not conferred on the plaintiffs any benefit in respect of saving the *chahar patni* from sale, there being nothing to prevent the Land Mortgage Bank from taking it in execution at any time; and even if he had, it was a mere voluntary payment by the defendant, which the plaintiffs were not under any obligation, express or implied, to recognize, and came within the observations of the Privy Council in *Ram Tuhul Singh* v. *Bisseswar Lall* (L. Rep. 2. I. A. 131, 143), that "it is not in every case in which a man has benefited by the money of another that an obligation to repay that money arises." SREENARAIN BAGCHEE *v.* SMITH. *Jackson* and *McDonnell*, JJ.....**I. L. Rep. 4 Cal. 807; 4 Cal. Rep. 148, 1879.**

See **Right to recover Government Revenue paid during Wrongful Possession.**

TILUCK CHAND *v.* SOUDAMINI DASI...**I. L. Rep. 4 Cal. 566.**

See **Co-Sharers of Patni Taluk.**

MOHESH CHUNDER *v.* RAM PURSONO...**I. L. Rep. 4 Cal. 539.**

See **Sale in Execution of Decree. 17.**

RAM TUHUL SINGH *v.* BISSESWAR LALL ..**L. Rep. 2 I. A. 131.**

Digitized by Google

SETTLEMENT BY REVENUE AUTHORITIES—*Right of Suit—Limitation—Act IX. of 1847,—Effect of Order under.*] Although a settlement made by the Revenue authorities under Act IX. of 1847 is final, the fact of such settlement will not preclude a proprietor from seeking in a Civil Court to establish his right to the lands so settled. In suits by a purchaser to recover possession of an estate sold or arrears of Government revenue due in respect of such estate, the purchaser's cause of action (by whatever period of limitation it would be restricted) arises from the time of the purchase, and the period of limitation is to be counted from that time. NARAIN CHUNDER *v.* TAYLER. *Jackson* and *Tottenham*, JJ...**I. L. Rep. 4 Cal. 103; 3 Cal. Rep. 151, 1878.**

SEVERAL ISSUES — DECISION ON ONE OF.

See **Letters Patent, 1865, Calcutta, Cl. 15. 2.**

EBRAHIM *v.* FACKRUNISSA BEGUM. **I. L. Rep. 4 Cal. 531.**

SHAM DECREE—Set up against a Purchaser *bonâ fide* for Value.

See **Mortgage. 7.**

GOPI *v.* MARKANDE...**I. L. Rep. 3 Bom. 30.**

SHARE OF AN ADOPTED SON OF A NATURAL SON, ON A PARTITION IN A MITAKSHARA FAMILY.

See **Hindu Law—Partition. 11.**

RAGHUBANUND *v.* SADHU CHURN. **I. L. Rep. 4 Cal. 425.**

SHARES — Transfer of — Right of Bank to refuse to Register.

See **Presidency Banks Act XI. of 1876.**

MOTHOORMOHUN *v.* BANK OF BENGAL...**I. L. Rep. 3 Cal. 392.**

SHEBAIT—Powers of.

See **Dewuttur. 1. 2.**

PROSONNO KUMARI *v.* GOLAB CHUND.....**L. Rep. 2 I. A. 145.**

KONWAR DOORGANATH ROY *v.* RAM CHUNDER SEN.....**L. Rep. 4 I. A. 52; I. L. Rep. 2. Cal. 311.**

SHEBAITSHIP SUCCESSION TO—Hindu Widow's Right of.

See **Hindu Law—Adoption. 2.**

JANOKEE *v.* GOPAUL ACHARJIA...**I. L. Rep. 2 Cal. 365.**

SHERIFF'S POUNDAGE—*Satisfaction of Decree after Attachment, but before Sale.*] Certain immoveable property of the defendant was attached in execution of a decree which had been partly satisfied by the proceeds of a previous sale in execution. Before any proceedings for sale were taken under the attachment, the defendant paid the balance and satisfied the plaintiff's claim in full:—

Held, that the Sheriff was entitled to poundage on the amount so paid in satisfaction of the debt, and satisfaction of the decree was ordered to be entered, and the attachment withdrawn, subject to the payment of such poundage. ROYCHURN DUTT *v.* AMEENA BIBI. *Macpherson*, J...**I. L. Rep. 2 Cal. 385, 1877.**

2. —— *Debt levied by Execution—Arrest.*] Where a defendant in a suit had been arrested by the Sheriff under a warrant of arrest in execution of the decree obtained by the plaintiff but the defendant was discharged from custody under the provisions of § 273 of Act VIII. of 1859, and Act XXIII. of 1861, § 8, without any portion of the amount endorsed on the writ having been recovered:—*Held*, following *Vinayek Vasudev* v. *Ritchie, Steuart & Co.* (4 Bom. H. C. Rep., O. C. J. 139), that the Sheriff was entitled to his poundage on the amount endorsed on the warrant of arrest. PEARSON *v.* MADHUB CHUNDER GHOSE. *Macpherson*, J... **I. L. Rep. 2 Cal. 387, n., 1872.**

SHERIFF'S SALE—*Purchaser at Sale by Sheriff under a Writ of Fieri Facias—Sale subsequently declared Invalid—Suit to recover Purchase-Money—Liability of Execution Creditor—Act VIII. of 1859, §§ 201, 242.*] The plaint in a suit by *A.* against *B.* stated that in a suit in which *B.* had recovered judgment against *C.*, a writ of *fieri facias* was issued on the 18th June 1866, on the application of *B.*, to the Sheriff of Calcutta, directing the Sheriff to levy a certain sum of money upon the property, moveable and immoveable, of *C.*, within the provinces of Bengal, Behar, Orissa, or Benares, or in any other factories or places then annexed and made subject to the Presidency of Fort William in Bengal, by seizure, and, if necessary, by sale thereof; that the said writ did not legally authorize the

Digitized by Google

SHERIFF'S SALE—*contd.*

levy of the sum therein mentioned by the seizure or sale of immoveable property in Oudh; that the Sheriff by the authority of the execution creditor, the defendant, and on the express instructions of his attorney, and professing to act under and by virtue of the said writ, seized the right, title, and interest of *C.* in a certain talook in Oudh, and put up to sale the same right, title, and interest of *C.*; that one *D.* became the purchaser thereof, and that a bill of sale was executed to him by the Sheriff, and that *D.* thereupon paid to the Sheriff the whole purchase-money, and he paid to the present defendant a part thereof, and paid the balance to *C.*, and put *D.* into possession, but that such sale and delivery of possession was not legal or operative by the law then in force in Oudh, and did not pass the right, title, and interest of *C.* to *D.*; that *D.* remained in possession as owner, collecting the rents, and eventually instituted proceedings for a partition of a portion of the premises purchased under the bill of sale, whereupon the Judicial Commissioner pronounced the sale to be null and void, and set it aside; and that *D.* was removed from possession (but it did not clearly appear from the plaint how or by whom *D.* was evicted); and that the plaintiff sued, as the executor of *D.*, to recover the whole of the purchase-money from *B.*:—

Held, on appeal, affirming the decision of *Phear*, J., that the plaint disclosed no cause of action.

The principle of the cases which establish that where the conveyance has been actually executed, and the purchaser has been evicted by a title to which the covenants in his purchase-deed do not extend, he cannot recover his purchase-money either at law or in equity, was directly applicable to the present case. The purchaser has the means of inquiring into his vendor's title. He is bound to satisfy himself of the goodness of the title he buys, and to protect himself by proper covenants; and a purchaser at a Sheriff's sale, who expressly buys only the title and interest that the Sheriff has to sell him, is in no better position than any other purchaser. If he chooses to buy imprudently, he must take the consequences of his imprudence.

Held, also, that there was no privity of contract between the plaintiff and defendant, which would justify the former in treating the latter as the party who had sold him the property. The fact of the defendant and his attorney having directed the Sheriff to seize the property

SHERIFF'S SALE—*contd.*

might have made the defendant answerable in tort to the judgment-debtor for the act of seizure, but it did not follow that the Sheriff was the defendant's agent for the purpose of making a contract, and executing a conveyance to any one who might become the purchaser at the sale.

Held, lastly, that having regard to the fact of the plaintiff's testator's long continuance in possession of the property, and in receipt of the rents and profits, the plaintiff could not sustain the claim against the defendant in the shape which the plaint assumed, *viz.*, for money had and received on the ground that the consideration had wholly failed. DORAB ALLY KHAN *v.* KHAJAH MOHEEOODEEN. *Garth*, C.J., and *Markby*, J.....**I. L. Rep. 1 Cal. 55, 1875.**

See this Case on Appeal, *infra*.

L. Rep. 5 I. A. 116; I. L. Rep. 3 Cal. 806.

2. —— *Lands seized and sold out of Jurisdiction—Eviction of Purchaser—Right to recover Purchase-Money.*] The general rule of English law governing sales by private contract either of a freehold or of a leasehold interest in land, that if the conveyance has been actually executed by *all* the necessary parties, and the purchaser is evicted by a title to which the covenants do not extend, he cannot recover the purchase-money either at law or in equity does not govern cases in which the sale, as regards the owner of the things sold, is *in invitum* and made under colour of legal process—as where the sale is by the Sheriff under a writ of *fi. fa.*, though the Sheriff was without authority to execute the writ at the place where the property was situate. Such cases must be governed by the rules applicable to Sheriff's sales.

When property has been so sold under a regular execution, and the purchaser is afterwards evicted under a title paramount to that of the judgment debtor, he has no remedy against either the Sheriff or the judgment creditor. But this is because the Sheriff is authorized by the writ to seize the property of the execution debtor which lies within his territorial jurisdiction, and to pass the judgment debtor's title to it without warranting it to be good. The Sheriff, however, if he acts *ultra vires* cannot invoke the protection which the law gives to him when acting within his jurisdiction. He is in the position of an ordinary person who

Digitized by Google

SHERIFF'S SALE—*contd.*

has sold that which he has no title to sell, and his responsibility in respect of the sale must be governed by the law relating to the sale of chattels, rather than by that relating to the sale of real estate.

The Sheriff selling under a writ of *fi. fa.*, therefore, may be held to undertake by his conduct that he is acting within his jurisdiction, and has seized and put up for sale the property sold in the exercise of his jurisdiction, though when he has jurisdiction he does not in any way warrant that the judgment debtor had a good title to it, or guarantee that the purchaser shall not be turned out of possession by some person other than the judgment debtor.

Where, therefore, a purchaser at a Sheriff's sale under a writ of *fi. fa.*, upon being evicted by the execution debtor, sued the execution creditor to recover the purchase money, the Sheriff being without authority to execute the writ at the place where the property was situate, but having sold under the authority and by the express direction of the judgment creditor; the case was remanded to be tried whether, on the facts to be proved, a cause of action having been shown by the plaintiff, the evicted purchaser was entitled to recover back the purchase-money as money had and received to his use as upon a total failure of consideration, or to any other and what relief. DORAB ALLY KHAN *v.* ABDOL AZEEZ...**L. Rep. 5 I. A. 116, 1878; I. L. Rep. 3 Cal. 806; 2 Cal. Rep. 529.**

3. —— *Mortgage—Lien of Mortgagee on Sale of Right, Title, and Interest of Mortgagor—Writ of fi. fa.—Purchaser at Sheriff's Sale at Instance of Mortgagee, without Notice of Mortgage.*] *N.*, *M.*, and *G.* borrowed from *B.* a sum of Rs. 12,000, to secure repayment of which they executed in her favour a joint and several bond in May 1863, for payment of the said sum with interest on the 6th of May 1864, and also a warrant to confess judgment on the bond. On the 27th of April 1864, *N.*, *M.* and *G.* executed a mortgage, in the English form, of certain property to *B.*, purporting to do so in pursuance of an agreement alleged to have been entered into between them and *B.* at the time the money was advanced in 1863; but the evidence did not establish such agreement. Under a writ of *fi. fa.* issued previously to the mortgage of 1864, *viz.*, on the 23rd of March 1864, in a suit against *M.* and *N.*, the Sheriff sold to *A.*, on the 7th of July 1864, the right, title and interest of *M.* and *N.* in the mortgaged property. Assuming that an agreement to mortgage had been entered into in 1863, *A.* had no notice of such agreement. After this, a writ of *fi. fa.* was issued by the Sheriff, at the instance of *B.*, in execution of a decree which *B.* had caused to be entered on the bond of May 1863; and under that writ the Sheriff, on the 22nd of Febuary 1866, sold the right, title, and interest of *N.*, *M.*, and *G.* in the mortgaged property, and *A.* became the purchaser. The purchase-money of this sale was paid to *B.*, and *A.* entered into possession of the property.

SHERIFF'S SALE—*contd.*

In a suit by *B.* against *A.* and others on the mortgage of the 27th of April 1864, for foreclosure or sale of the property, *Phear*, J., *held*:—That the *fi. fa.* issued on the 23rd of March 1864, previously to the mortgage, must be taken to have operated against the shares of *M.* and *N.* from the date when it was issued; that even if there was an agreement to mortgage, as alleged, then, although as against *N.*, *M.* and *G.* themselves, a Court of Equity would treat such agreement as equivalent to an actual mortgage, yet it would not do so as against a purchaser under the *fi. fa.* without notice; and that the sale of the 7th July 1864, therefore, passed the shares of *M.* and *N.* to *A.* free of any rights or equities of *B.* Further, that the sale by the Sheriff of the 22nd February 1866, having been effected at the instance of *B.*, for the purpose of realizing the mortgage debt, was operative, as between *B.* and *A.*, to pass to *A.* the entire shares of *N.*, *M.*, and *G.* free of *B.*'s mortgage lien.

Held, on appeal, that no agreement to mortgage being established, the sale by the Sheriff to *A.* in 1864 overrode the mortgage to *B.*, and passed to *A.* the shares of *M.* and *N.*

Held, further, that the sale by the Sheriff in 1866 being of the right, title, and interest of *N.*, *M.*, and *G.*, and made at the instance of *B.*, without notice of her mortgage, and *B.* having received the purchase-money, which would appear to have been estimated on the value of the unencumbered shares, and no objection having been made to the sale by the mortgagors, who had allowed *A.* to hold unchallenged possession ever since, the entire equitable estate in the share of *G.* must be taken to have passed to *A.*

A mortgagee is not entitled, by means of a money decree obtained on a collateral security,

Digitized by Google

SHERIFF'S SALE—*contd.*

such as a bond or covenant, to obtain a sale of the equity of redemption separately. To allow him to do so would deprive the mortgagor of a privilege which is an equitable incident of the contract of mortgage, *viz.*, a fair allowance of time to enable him to redeem the property. BHUGGOOBUTTY DOSSEE *v.* SHAMACHURN BOSE. *Garth*, C. J., and *Pontifex*, J.....**I. L. Rep. 1 Cal. 337.**

See TUKARAM *v.* RAMCHUNDRA... **I. L. Rep. 1 Bom. 314.**

Under **Mortgage. 5.**

4.—— *Warranty of Title—Act VIII. of 1859, §§ 212, 249, 252, 256 to 258.*] A purchaser of immoveable or moveable property, at a sale in execution of a decree under the provisions of Act VIII. of 1859, has no right to recover his purchase-money, though it may turn out that the right, title, and interest of the judgment debtor was nothing at all, unless the sale itself be set aside, and the sale will not be set aside by reason merely of the defect or absence of title in the thing sold on the part of the execution debtor; but if in a sale by the Sheriff there is not only no disclaimer of warranty of title, but even an express assertion that the goods sold are the property of the execution debtor, the Sheriff and the execution creditor, if responsible for such assertion, are bound by such warranty, to this extent at least—that the Sheriff, if he has still in his hands the purchase-money, or the execution creditor, if the money has been paid over to him, is bound to restore it to the purchaser, if it turns out that the purchaser has not got that for which he has paid.

Section 258 of Act VIII. of 1859 applies wherever a sale is set aside, whether for irregularity in publishing or conducting the sale, or for other grounds; and though the right of the purchaser to recover back his purchase-money in case of a sale being set aside is by that Act given expressly only where the sale is of immoveable property, yet on general principles the same consequence will follow where a sale of moveable property in execution is set aside.

Where, therefore, certain shares were attached by the execution creditor, as the property of his execution debtor, and were afterwards sold in execution by the Sheriff, and the execution creditor, caused (or allowed) to be introduced into the order for attachment, the warrant of attachment, the order for sale, the warrant of sale, and in the advertisement or proclamation,

SHERIFF'S SALE—*contd.*

words containing a statement that the property attached and sold in execution was the property of the defendant, whereas it was not the property of the defendant:—

Held, that the purchaser at the execution sale was entitled to have the sale set aside and the purchase-money returned to him. The Sheriff's liability to the purchaser in such a case ceases when he has paid over the proceeds of the execution sale to the execution creditor, and the purchaser's remedy thereafter is against the execution creditor only. FRAMJI BEJANJI DASTUR *v.* HORMASJI PESTANJI FRAMJI. *Green*, J... **I. L. Rep. 2 Bom. 258, 1877.**

SHIP—Bill of Lading—Exception of Liability for Loss by Fire.

See **Bill of Lading.**

CHIN HONG & Co. *v.* SENG MOH & Co...**I. L. Rep. 4 Cal. 736.**

SIGNATURE—On Acknowledgment of Debt — Heading of Letter.

See **Acknowledgment of Debt. 1.**

MATHURA DAS *v.* BABU LAL.....**I. L. Rep. 1 All. 683.**

—— By Agent of Acknowledgment of Motgagor's Title.

See **Acknowledgment of Mortgagor's Title. 3.**

RAHMANI BIBI *v.* HULASA KUAR... **I. L. Rep. 1 All. 642.**

SIGNATURE OF ATTESTING WITNESS TO WILL NECESSARY, MARK INSUFFICENT.

See **Indian Succession Act X. of 1865, § 50; Cl. 3.**

FERNANDEZ *v.* ALVES...**I. L. Rep. 3 Bom. 382.**

SIRDAR—Execution of Decree against Heir of.

See **Execution of Decree. 5.**

GOVIND *v.* SAKHARAM.....**I. L. Rep. 3 Bom. 42.**

See **Limitation. 62.**

SAKHARAM *v.* GANESH.....**I. L. Rep. 3 Bom. 193.**

—— Execution of Decree against a—against his Heir, not being himself a Sirdar.

See **Limitation. 62.**

SAKHARAM *v.* GANESH.....**I. L. Rep. 3 Bom. 193.**

Digitized by Google

SIR LAND—Not Assessed—Suit for Profits of—by Purchaser of Share in a Mahal.

See **Suit for Profits.**

MUHAMMAD ALI *v.* KALIAN SINGH. **I. L. Rep. 1 All. 659.**

—— Possession of—by Some Members of Family—Partition.

See **Hindu Law—Partition. 9.**

RUNJEET SINGH *v.* KOOER GUJRAJ SINGH.....**L. Rep. 1 I. A. 9.**

—— Right of Occpancy in—of Mortgagors.

See **Act XVIII. of 1873, § 7.**

BAKHAT RAM *v.* WAZIR ALI.....**I. L. Rep. 1 All. 448.**

SISTER—Right of—to succeed in Preference to Separated Half-Brother.

See **Hindu Law — Inheritance—Sister. 1.**

SAKHARAM S. ADHIKARI *v.* SITABAI...**I. L. Rep. 3 Bom. 353.**

—— Right of—to succeed in Preference to Separated Remote Male Relative of Deceased.

See **Hindu Law — Inheritance—Sister. 2.**

DHONDU GURAR *v.* GANGABAI...**I. L. Rep. 3 Bom. 368.**

—— Right of—to succeed in Preference to Widow of Separated Paternal Uncle.

See **Hindu Law — Inheritance—Sister. 2.**

MAHANTAPA *v.* NILGANGAWA...**I. L. Rep. 3 Bom. 368, n.**

SISTER'S SON—Adoption of—Void among Brahmans, Kshatriyas, and Vaishyas—Lingayets are Sudras.

See **Hindu Law—Adoption. 6. 7.**

GOPAL *v.* HANMANT...**I. L. Rep. 3 Bom. 273.**

BHAGIRTHIBAI *v.* RADHABAI..... **Ibid. 298.**

—— Adoption of—Valid among Jains.

See **Hindu Law—Adoption. 1.**

HASSAN ALI *v.* NAGA MAL...**I. L. Rep. 1 All. 288,**

SITE OF ROAD—Presumption of Ownership of.

See **Ownership of Site of Road.**

MOBARUCK SHAH *v.* TOOFANY...**I. L. Rep. 4 Cal. 206.**

SLAVERY—Mahomedan Law — Heritable Rights of Emancipator of Slave.

See **Act V. of 1843.**

SAYAD MIR UJMUDIN KHAN *v.* ZIA-UL-NISSA BEGUM.....**L. Rep. 6 I. A. 137; I. L. Rep. 3 Bom. 422.**

SMALL CAUSE COURT JUDGE INVESTED WITH POWERS OF SUBORDINATE JUDGE.

See **Principal and Surety. 1.**

CROSTHWAITE *v.* HAMILTON... **I. L. Rep. 1 All. 87.**

SMALL CAUSE COURT—MOFUSSIL—Arrest by—in Execution of Decree.

See **Civil Procedure Code, Act X. of 1877, § 223.**

CHUNILAL *v.* PARBHUDAS.....**I. L. Rep. 2 Bom. 560.**

——Execution of Decree of.

See **Execution of Decree. 21.**

BADAN BEBAJEA *v.* KALA CHAND BEBAJEA.....**I. L. Rep. 4 Cal. 823.**

——Execution of Decree of—beyond Local Jurisdiction.

See **Execution of Decree. 23.**

MANSUK *v.* SHIVARAM ...**I. L. Rep. 2 Bom. 532.**

——Execution of Decree of—against Immoveable Property.

See **Execution of Decree. 22.**

GOPAL *v.* NANKU.....**I. L. Rep. 1 All. 624.**

——Jurisdiction—Suit for Arrears of Rent at Enhanced Rate.

See infra. **5.**

——Jurisdiction — Suit for Balance of Rent collected as Plaintiff's Agent.

See infra. **7.**

——Jurisdiction—Suit for *Baluta Haks.*

See **Baluta.**

NARU PIRA *v.* NARU SHIDESHVAR...**I. L. Rep. 3 Bom. 28.**

Digitized by Google

SMALL CAUSE COURT—MOFUSSIL— *contd.*

——Jurisdiction—Suit for *Hak-i-Chaharan* or other Zemindary Cesses.

See infra. **4.**

—— Jurisdiction— Suit for Maintenance.

See infra. **1. 2.**

——Jurisdiction—Suit on Mortgage Bond.

See **Mortgage. 28.**

PHUL KUAR *v.* MURLI DHUR...**I. L. Rep. 2 All. 527.**

——Jurisdiction—Suit for Moveable Property attached, under Rs. 500.

See infra. **3.**

—— Jurisdiction—Suit for Value of Crops Illegally Distrained.

See **Beng. Act VIII. of 1869, § 98. 1.**

HYDER ALI *v.* JAFAR ALI.....**I. L. Rep. 1 Cal. 183.**

—— Municipality—Suit against—Jurisdiction.

See **Suit against a Municipality. 1.**

THE AHMEDABAD MUNICIPALITY *v.* MAHAMAD JAMAL.....**I. L. Rep. 3 Bom. 146.**

—— Subordinate Judge with Powers of.

See **Award. 1.**

BALKRISHNA *v.* LAKSHMAN...**I. L. Rep. 3 Bom. 219.**

—— Title, Incidental Determination of Issue of—in Suit for Rent—Subsequent Suit to try Title.

See **Res Judicata. 8.**

INAYAT KHAN *v.* RAHMAT BIBI... **I. L. Rep. 2 All. 97.**

1. —— *Maintenance — Suit for.*] In a suit by a widow against her husband's brother for a pecuniary allowance as maintenance, and for the expenses of a pilgrimage to Benares:—*Held*, following *Sidlingapa* v. *Sidava* (I. L. Rep. 2 Bom. 624), that the suit, though for a sum under Rs. 500, was not cognizable by a Mofussil Small Cause Court, there being no allegation that the maintenance was secured by bond or other special contract. APAJI CHINTAMAN *v.* GANGABAI. *Westropp*, C.J., *Kemball* and *West*, JJ...**I. L. Rep. 2 Bom. 632, 1878.**

S. C. under **Hindu Law—Maintenance of Widow. 15.**

SMALL CAUSE COURT—MOFUSSIL— *contd.*

2. —— *Maintenance of Wife—Suit for.*] In the absence of any special bond or other contract for the payment of maintenance, a suit for maintenance is not cognizable in a Court of Small Causes in the Mofussil. SIDLINGAPA *v.* SIDAVA. *Westropp*, C. J., *Kemball* and *West*, JJ.....**I. L. Rep. 2 Bom. 624, 1878.**

S. C. under **Hindu Law—Maintenance of Wife. 1.**

3. —— *Suit by Plaintiff as Owner to recover Moveable Property under Rs. 500—Jurisdiction.*] The plaintiff was owner of moveable property of less value than Rs. 500, attached in execution of a decree, and his claim to such property having been rejected under Act VIII. of 1859, § 246, he brought this suit in the Small Cause Court at Ahmedabad to recover possession.

Held, that the suit was cognizable by a Mofussil Court of Small Causes. NATHU GANESH, *v.* KALIDAS UMED. *Westropp*, C.J., and *Melvill*, J.....**L. L. Rep. 2 Bom. 365, 1877.**

4.—— *Jurisdiction—Act XXIII. of* 1861, § 27—*Suit for* "Huq-i-Chaharum" *or other Zemindar Cesses—Misjoinder.*] The plaintiff sued to recover from the defendants as joint decree-holders a fourth-share of the sale-proceeds of certain houses situated on the plaintiff's estate which the defendants had attached and sold in execution of a decree against a judgment-debtor, basing his claim on an alleged village custom obtaining in the estate by which the plaintiff as zemindar was entitled to receive as "*Huq-i chaharum*" one-fourth of the sale-proceeds of property situate on the estate as a proprietary due :—

Held, by the Full Bench, that the claim did not fall within any of the classes of suits made cognizable by a Small Cause Court under Act XI. of 1865. The claim was for a zemindari due customarily payable ; it was not a claim for money due on contract, nor for personal property or the value thereof, or for damages. Where "*chaharum*" is payable in virtue of a contract, the claim is of a nature triable by a Court of Small Causes.

Held, by the Division Bench, that there was no misjoinder, as the due was payable out of the sale-proceeds taken out of Court by the decree-holders. NANKU *v.* THE BOARD OF REVENUE...**I. L. Rep. 1 All. 444, 1877, F. B.**

Digitized by Google

SMALL CAUSE COURT — MOFUSSIL —*contd.*

5. —— *Jurisdiction—Arrears of Rent at Increased Rate—Special Appeal.*] The plaintiff, a *mulgar* or *rayat* under Government, paid on his land Rs. 56-8-0 until 1872, when North Kanara was surveyed and his assessment increased to Rs. 129-8-0, and he was also made liable to a local fund cess of Rs. 4-9-0. His ancestor had sublet the land to the defendant in 1847, at a fixed annual rental of Rs 150 on a *mulgeni kabulayat*. The plainitiff sued the defendant to recover the enhanced assessment and cess. An objection was taken in appeal that the amount claimed being less than Rs. 500, the suit was cognizable by a Small Cause Court, and that, therefore, a second appeal did not lie :—*Held*, that the suit might be regarded as one for arrears of rent at an increased rate, and, as such, was not cognizable by the Small Cause Court. BABSHETTI *v.* VENKATARAMANA. *West* and *Pinhey*, JJ...**I. L. Rep. 3 Bom. 154, 1879.**

S. C. under **Mistake. 1.**

6. —— *Act XI. of* 1865, § 6, *Cl.* 4—*Bengal Act VIII. of* 1869, § 104—*Act X. of* 1859, § 23, *Cl.* 2—*Special Appeal—Act XXIII. of* 1861, § 27.] The plaintiff, the holder of a *patni* taluk, by an arrangement with the defendants, his zemindars, paid the Government revenue and the road-cess tax for the year 1874, and then tendered the balance of the rent for that year to the defendants, but they refused to accept it; and he therefore deposited it in the Munsiff's Court, in accordance with § 46 of Beng. Act VIII. of 1869. One of the defendants then took proceedings under Beng. Reg. VIII. of 1819, to recover his share of the rent, and, notwithstanding the protest of the plaintiff that the rent had been already paid, obtained an order for the sale of the tenure; and to prevent the sale, the plaintiff had to pay the sum claimed for rent. In a suit brought to recover that amount with interest :—

Held, that it was a suit cognizable by a Court of Small Causes under § 6 of Act XI. of 1865, and therefore a special appeal was barred by Act XXIII. of 1861, § 27. It was not a suit for "damages on account of illegal exaction of rent" within the meaning of Cl. 2, § 23 of Act X. of 1859. KRISHNA KISHORE SHAHA *v.* BIRESHUR MOZOOMDAR. *Mitter* and *Maclean*, JJ...**I. L. Rep. 4 Cal. 595; 3 Cal. 177, 1878.**

SMALL CAUSE COURT — MOFUSSIL —*contd.*

7. —— *Act XI. of* 1865, §§ 6 and 12—*Jurisdiction of Civil Courts—Mofussil Small Cause Courts—Act XXIII. of* 1861—*Special Appeal.*] A suit for a balance claimed to be due on account of rents collected from the plaintiff's zemindaries by the defendant's father, acting as the agent of the plaintiff's, is a suit in which money is claimed as due on a contract within the meaning of § 6 of Act XI. of 1865; and therefore is a suit cognizable by a Mofussil Small Cause Court, where the amount claimed does not exceed Rs. 500; and it is none the less cognizable by the Small Cause Court because it may be necessary to go into the accounts of both parties to see whether the amount claimed be really due or not.

Where such a suit has been entertained by a Civil Court within the local jurisdiction of a Small Cause Court, a special appeal will lie; § 27 of Act XXIII. of 1861 applying only to a suit which is properly brought in a Civil Court, because there is no Small Cause Court having jurisdiction to entertain it. Where a Small Cause Court has been constituted, that Court alone has jurisdiction in a certain class of cases. But where no Small Cause Court has been constituted, that same class of cases must be brought in the ordinary Courts if they are properly brought in the ordinary course by reason of there being no small Cause Court having jurisdiction, then, and then only, § 27 of Act XXIII. of 1861 is applicable. DYEBUKEE NUNDUN SEN *v.* MUDHOO MUTTY GOOPTA. *Macpherson* and *Morris*, JJ.

I. L. Rep. 1 Cal. 123, 1875.

SMALL CAUSE COURT—PRESIDENCY TOWN—Execution of Decree of—Sale of Fixtures in.

See **Fixtures.**

MILLER *v.* BRINDABAN...**I. L. Rep. 4. Cal. 946.**

1. —— *Act IX. of* 1850, § 42—*Power to restore Case struck off for Default in Appearance.*] A Court of Small Causes, constituted under Act IX. of 1850, can, during the same day, and at the same sitting of the Court, *ex parte*, restore a cause once struck out under § 42, though the order for striking off may have been duly recorded. In such a case, it would be open to the defendant to apply to set aside such *ex-parte* order, and the sufficiency of the grounds of the application would be one for the discretion of the Judge. SIB CHUNDER MULLICK *v.* KISSEN DYAL OPADHYA. *Garth*, C.J., and *Macpherson*, J...**I. L. Rep. 1 Cal. 476, 1876.**

Digitized by Google

SMALL CAUSE COURT—PRESIDENCY TOWN—*contd.*

2. —— *Act IX. of* 1850, §§ 25 *and* 91—*Title to Immoveable Property—Form of Suit—Amendment.*] In a suit brought under § 91 of Act IX. of 1850, the Bombay Small Cause Court has no jurisdiction to try a question of adverse title to the immoveable property, the subject of the suit. *Aliter* if the suit be brought under § 25 of Act IX. of 1850, as extended by § 2 of Act XXVI. of 1864, and if the property in dispute do not exceed Rs. 1,000 in value.

In a suit involving a question of adverse title, the plaintiff should be allowed to amend the summons issued under § 91 of Act IX. of 1850, so as to render it conformable with a claim under § 25 of Act IX. of 1850 and § 2 of Act XXVI. of 1864, if the summons were issued in the mistaken form by the fault of the clerk of the Court, and not of the plaintiff, and provided the Court be satisfied that the property sued for do not exceed Rs. 1,000 in value. NOWLA OOMA *v.* BALA DHURMAJI. *Westropp*, C.J., and *Sargent*, J.....**I. L. Rep. 2 Bom. 91, 1877.**

3. ——*Jurisdiction—Immoveable Property.*] The effect of § 2 of Act XXVI. of 1864 is to extend the compulsory jurisdiction of the Courts of Small Causes in the Presidency Towns, in suits to recover immoveable property, to cases where the value of the immoveable property does not exceed Rs. 1,000.

The Small Cause Court of Bombay has, therefore, jurisdiction to try a suit for the possession of immoveable property of a value greater than Rs. 500 and less than Rs. 1,000. WALJI KARIMJI *v.* JAGGANATH PREMJI. *Westropp*, C.J., and *Sargent*, J.....**I. L. Rep. 2 Bom. 84, 1877.**

4. ——*Splitting Cause of Action—Tradesman's Accounts—Act IX. of* 1850, § 34.] A tradesman cannot, by keeping separate accounts of his dealings with a customer, split his cause of action so as to bring his suit within the jurisdiction of a Small Cause Court in the Presidency towns. CASSUM JOOMA *v.* THUCKER LILLADAR KESSOWJI. *Westropp*, C.J., and *Sargent*, J.....**I. L. Rep. 2 Bom. 570, 1878.**

5. —— *Calcutta Small Cause Court—Constitution of—Writ of* Habeas Corpus *Return to.*] The Small Cause Court at Calcutta is not independent of the jurisdiction of the High Court, nor is it a Court of co-ordinate jurisdiction with the High Court; but is an inferior Court, and subordinate to the control and authority of the High Court, which has power to examine into and determine on the validity of orders of the Small Cause Court, which are brought before it regularly for that purpose.

Therefore, where on a prisoner being brought up before the High Court on a writ of *habeas corpus ad subjiciendum*, the return of the jailor stated that the prisoner was detained under a warrant of arrest issued in execution of a decree of the Small Cause Court:—

Held, that the return was not conclusive, but that the prisoner was entitled to show by affidavits that he was privileged from arrest at the time he was taken into custody. *In the matter of* OMRITOLALL DEY. *Phear*, J...**I. L. Rep. 1 Cal. 78, 1875.**

S. C. under **Privilege from Arrest.**

SMRITI CHANDRIKA—Authority of.

See **Hindu Law—Authority of Writers. 4. 5.**

MORARJI GOKALDAS *v.* PARVATIBAI **I. L. Rep. 1 Bom. 177.**

LALLUBHAI *v.* MANCOOVERBAI... **I. L. Rep. 2 Bom. 388.**

SODI RAZINAMA—*Evidence Act I. of* 1872, § 91.] The document called a *Sodi Razinama* (whereby a party relinquishes his right of occupancy of land in his possession to his landlord, and requests the latter to register the land in the name of another party to whom it has been sold) is not a document of the kind mentioned in the Evidence Act I. of 1872, § 91, and therefore does not exclude the Court from basing their findings upon other evidence, should any such exist. *Innes* and *Forbes*, JJ. VENKATESA *v.* SENGODA ..... **I. L. Rep. 2 Mad. 117, 1879.**

SOLE REPRESENTATIVE OF WATANDAR FAMILY—Right to Officiate as.

See **Declaratory Decree. 18.**

KHANDO *v.* APPAJI...**I. L. Rep. 2 Bom. 370.**

SOLE AND SEPARATE USE — Bequest to the—of a Married Woman.

See **Married Woman's Separate Property. 2.**

HURST *v.* MUSSOORIE BANK...**I. L. Rep. 1 All. 762.**

BERESFORD *v.* HURST...**Ibid. 772.**

Digitized by Google

SOLICITOR'S LIEN FOR COSTS.

See **Mortgage. 38.**

BRIJNATH DASS *v.* JUGGERNATH DASS..... **I. L. Rep. 4 Cal. 742.**

SON OF TALUKDAR'S DAUGHTER "TREATED BY HIM IN ALL RESPECTS AS HIS OWN SON."

See **Act I. of 1869, § 22, Cl. 4.**

MAHARAJAH PERTAB NARAIN SINGH *v.* MAHARANEE SABHAO KOOER...**L. Rep. 4 I. A. 228**; S. C. **I. L. Rep. 3 Cal. 626.**

SONTHAL PARGANAS—Appeals in Suits tried in.

See **Jurisdiction. 11.**

SURDHAREE LOLL *v.* MANSOOR ALLY KHAN.....**I. L. Rep. 3 Cal. 298.**

Power of the High Court to sanction the trial of a suit for land situated in the Sonthal Parganas —Act VIII. of 1859, § 12—§§ 385, 386—*Sonthal Districts—Act. XXXVII. of* 1855, §§ 1, 2, 4—*Jurisdiction — Beng. Reg. III. of* 1872,] Act VIII. of 1859 was in force in 1876 in the Sonthal Parganas under § 2, Sonthal Regulation III. of 1872, as regards suits triable in Courts constituted under Act VI. of 1871. Section 4 of that Regulation (read with the notification of the Lieutenant-Governor, dated 4th August 1873) vesting the Deputy Commissioner of the District of the Sonthal Parganas with the powers of a District Judge as described in Act VI. of 1871, has the effect of making the Sonthal Parganas a district as defined by § 386 of Act VIII. of 1859; and therefore the High Court has power, under § 12, Act VIII. of 1859, to sanction the trial of a suit for land situated in the Sonthal Parganas, in which the value of the subject-matter exceeds Rs. 1,000, in the Civil Court competent to try it. KALIPROSAD RAI *v.* MEHER CHANDRO ROY. *Ainslie* and *McDonnell*, JJ. **I. L. Rep. 4 Cal. 222, 1878.**

SOUDAYAKAM.

See **Hindu Law — Alienation by Widow. 2.**

MADHAVARAYA *v.* TIRTHA SAMI. **I. L. Rep. 1 Mad. 307.**

SPECIAL APPEAL—Absence of Notice of Action, Plea of—not allowed on.

See **Act XV. of 1873, §§ 28 and 43.**

MUNICIPAL COMMITTEE OF MORADABAD *v.* CHATRI SINGH... **I. L. Rep. 1 All. 269.**

—— As to Costs—none unless Order Illegal.

See **Costs. 2.**

FUTEEK PAROOEE *v.* MOHENDER NATH.....**I. L. Rep. 1 Cal. 385.**

—— Evidence—Power of High Court to consider the Evidence on.

See **Contract. 4.**

NANAK RAM *v.* MEHIN LAL...**I. L. Rep. 1 All. 487.**

—— Evidence of Error of Calculation in Conversion of Coinage.

See **Enhancement of Rent. 2.**

MEER MAHOMED HOSSEIN *v.* FORBES...**L. Rep. 2 I. A. 1.**

—— *Ex-parte* Decree—Rehearing granted after Time Limited.

See **Civil Procedure Code, Act VIII. of 1859, § 119. 2.**

RUNGLALL MISSER *v.* TOKHUN MISSER...**I. L. Rep. 2 Cal. 114.**

—— Limitation.

See **Appeal—Civil. 31.**

MORU *v.* GOPAL...**I. L. Rep. 2 Bom. 120.**

—— Non-Joinder of Local Government— Plea of—*Quære* if Good on.

See **Act XV of 1873, §§ 28 and 43.**

MUNICIPAL COMMITTEE OF MORADABAD *v.* CHATRI SINGH...**I. L. Rep. 1 All. 269.**

—— Non-Joinder of Parties.

See **Co-Sharers of Land. 4.**

BOYDONATH BAG *v.* GRISH CHUNDER ROY...**I. L. Rep. 3 Cal. 26.**

—— Objection as to Guardian *de facto* not being Legal Guardian cannot be taken for First Time on.

See **Mahomedan Law — Sale by Guardian.**

HASAN ALI *v.* MEHDI HUSAIN... **I. L. Rep. 1 All. 533.**

Digitized by Google

SPECIAL APPEAL—*contd.*

—— Objection to Illegality of Oath other than in Prescribed Form, administered by Arbitrators, first taken on.

See **Oaths Act X. of 1873, §§ 8. 10. 13.**

WALI-UL-LA *v.* GHULAM ALI...**I. L. Rep. 1 All. 535.**

—— Objection not taken in Memo. of — not allowed to be taken at Hearing—Absence of Notice to Quit.

See **Practice—Civil. 10**

BABAJI *v.* NARAYAN...**I. L. Rep. 3 Bom. 340.**

—— Objection as to Want of Possession of Plaintiff's Vendor.

See **Appeal—Civil. 34.**

—— By Respondent from Judgment *ex parte*.

See **Appeal—Civil. 6. 28.**

KALI KISHORE ROY *v.* DHUNUNJOY ROY...**I. L. Rep. 3 Cal. 228.**

Ex p. MADALATHA...**I. L. Rep. 2. Mad. 75.**

—— Review—Order admitting, without Legal Ground may be questioned on.

See **Review. 2.**

ROY MEGRAJ *v.* BEEJOY GOBIND... **I. L. Rep. 1 Cal. 197.**

—— Right of Purchaser from a Defendant, after Decree against the latter, to carry on—on Death of Defendant.

See **Abatement of Appeal—Civil.**

MORESHWAR *v.* KUSHABA...**I. L. Rep. 2 Bom. 248.**

—— In Suits of a Nature Cognizable by a Small Cause Court.

See the Cases under **Small Cause Courts—Mofussil.**

See **Appeal—Civil. 32.**

—— Suit Cognizable by Small Cause Court, entertained without Jurisdiction by Civil Court, within Limits of Small Cause Court's Jurisdiction.

See **Small Cause Court—Mofussil. 7.**

DYEBUKEE *v.* MUDHOO MUTTY...**I. L. Rep. 1 Cal. 123.**

SPECIAL APPEAL—*contd.*

—— Suit Cognizable by Small Cause Court—Suit for "*Huq-i-Chaharum.*"

See **Small Cause Court—Mofussil. 4.**

NANKU *v.* BOARD OF REVENUE... **I. L. Rep. 1 All. 444.**

—— Suit of Nature Cognizable by Small Cause Court, instituted before Act XLII. of 1860.

See **Act XXIII. of 1861, § 27.**

BICHUCK SINGH *v.* NAGESHAR NATH.....**I. L. Rep. 2 All. 112.**

SPECIAL CITATION — Step-Mother — *Caveat.*

See **Administration. 3.**

In the Goods of HURRY DOSS BANNERJEE...**I. L. Rep. 4 Cal. 87.**

SPECIAL COURT AT RANGOON—JURISDICTION OF—To entertain Appeal from Sentence of Judicial Commissioner in Case transferred by him from Sessions Judge.

See **Jurisdiction. 17.**

EMPRESS *v.* TSIT OOE...**I. L. Rep. 4 Cal. 667.**

SPECIAL DAMAGE FROM PUBLIC NUISANCE.

See **Right to Sue. 1. 2. 3. 4. 5.**

SPECIAL LEAVE TO APPEAL—Material Misstatement in Petition for.

See **Bengal Reg. VIII. of 1819, § 8, Cl. 2. 1.**

RAM SABUK BOSE *v.* MONMOHINI DOSSEE.....**L. Rep. 2 I. A. 71.**

—— *Nunc pro tunc.*

See **Practice—Civil. 1.**

GAJADHUR PERSHAD *v.* THE TWO WIDOWS OF EMAM ALI BEG... **L. Rep. 2 I. A. 205.**

—— Against Order Suspending Pleader.

See **Practice—Privy Council. 5.**

In the matter of QUARRY.....**I. L. Rep. 2 All. 511.**

—— Practice.

See **Practice—Privy Council. 6. 7. 8. 9.**

Digitized by Google

SPECIALLY REGISTERED BOND—Appeal from Order in Execution of Decree on.

See **Appeal—Civil. 7. 11. 12.**

BHYRUB CHUNDER *v.* GOLAP COOMARY.....**I. L. Rep. 3 Cal. 517.**

RAMANAND *v.* BANK OF BENGAL... **I. L. Rep. 1 All. 377.**

WILAYAT-UN-NISSA *v.* NAJIB-UN-NISSA .....**Ibid. 583.**

—— Limitation for Execution of Decree on.

See **Appeal—Civil. 12.**

WILAYAT-UN-NISSA *v.* NAJIB-UN-NISSA.....**I. L. Rep. 1 All. 583.**

See **Limitation. 79.**

JAI SHANKAR *v.* TETLEY...**I. L. Rep. 1 All. 586.**

SPECIALLY REGISTERED MORTGAGE BOND—Decree on.

See **Sale in Execution of Decree. 5.**

AKHE RAM *v.* NAND KISHORE... **I. L. Rep. 1 All. 236.**

SPECIFIC PERFORMANCE.

See **Limitation. 61.**

AHMED MAHOMED *v.* ADJEIN DOOFLY...**I. L. Rep. 2 Cal. 323.**

—— Of Agreement to Lend Money on Mortgage.

See **Specific Performance. 2,** *infra.*

—— Of Agreement to Refer to Arbitration.

See **Contract. 8.**

KOEGLER *v.* THE CORINGA OIL CO...**I. L. Rep. 1 Cal. 42. 466.**

—— Of Contract to give in Marriage.

See **Injunction. 1.**

GUNPUT NARAYAN SINGH...**I. L. Rep. 1 Cal. 74.**

—— Of Contract to settle Property on Adopted Son.

See **Hindu Law—Adoption. 16.**

BHALLA *v.* PARBHU...**I. L. Rep. 2 Bom. 67.**

—— Suit for

See **Misjoinder of Causes of Action.**

GUMANI *v.* RAM CHARAN...**I. L. Rep. 1 All. 555.**

SPECIFIC PERFORMANCE—*contd.*

1. —— *Kabooleut.*] One of the terms of a *Kabooleut*, equally binding on the Government and a zamindar, the parties concerned, was as follows:—" The construction of *bheries* (small embankments), the excavation of the silt of *khals*; the closing (the mouths) of the *khals*; the construction of *gangura* (large embankments), &c., in connection with the salt and sweet lands of the said parganna, shall be made by the Government of the Honourable Company." In a suit by the zamindar to obtain an order upon the Government to re-excavate and clear the water-passage of a particular *khal* situate within the parganna, the subject of the *kabooleut*, and which formed the connecting link between two rivers, and had from the time of the decennial settlement been used as the outlet for all the water which accumulated on the plaintiff's land:—

Held, that it was not a case in which the Court would decree specific performance. The terms of the *kabooleut* were extremely vague, and it would be dangerous to impose on the Government, on the strength of such terms as " the excavation of the silt of *khals*, the closing of the mouth of *khalsai*," so onerous an obligation as the plaintiff sought to impose. There was moreover, an objection on principle to requiring the Government, or any person whom it was sought to bind by such words, not to do that which might, on a proper consideration of the whole subject, carry out the purpose obviously intended, but to do a particular thing because that particular thing was once done in view of the same object. CHUNDER SEKHUR MOOKERJEE *v.* THE COLLECTOR OF MIDNAPORE. *Jackson* and *Kennedy*, JJ.....**I. L. Rep. 3 Cal. 464; 1 Cal. Rep. 384. 1878.**

2. —— *Agreement to Lend Money on Mortgage.*] In a suit to compel the defendant to advance to the plaintiffs the unpaid balance of a sum of money which the defendant had agreed to advance on a mortgage, and for which a mortgage had been executed and delivered to the defendant:—

Held, that the Court ought not to make a decree for specific performance of such agreement. The plaintiffs could obtain compensation or damages in a suit properly framed against the defendant for breach of his contract, or redeem the mortgage by payment of the amount due, if they wished to prevent the defendant

Digitized by Google

SPECIFIC PERFORMANCE—*contd.*

from assigning the mortgage. ANAKARAN KASMI *v.* SAIDAMADATH AVULLA. *Kernan* and *Forbes*, JJ.....**I. L. Rep. 2 Mad. 79, 1879.**

SPECIFIC RELIEF ACT I. OF 1877—Injunction under.

See **Injunction. 2.**

DHURONIDHUR SEN *v.* THE AGRA BANK.....**I. L. Rep. 4 Cal. 380.**

—— § 27, Cl. *b*.

See **Misjoinder of Causes of Action.**

GUMANI *v.* RAM CHARAN...**I. L. Rep. 1 All. 555.**

—— § 42.

See **Declaratory Decree. 15.**

GANPATGIR *v.* GANPATGIR...**I. L. Rep. 3 Bom. 230.**

SPECIFIC STATEMENT OF RELIEF GRANTED BY DECREE.

See **Decree. 2. 8.**

KANGAL CHANDRA *v.* KANYE LALL. **I. L. Rep. 4 Cal. 69.**

THAMMAN SINGH *v.* GANGA RAM. **I. L. Rep. 2 All. 342.**

HARSUKH *v.* MEGHRAJ...**Ibid. 345.**

SPECIFIC TITLE—Alleged in Suit for Possession—Failure to prove—Adverse Possession.

See **Adverse Possession.**

GOSSAIN DASS *v.* ISSUR CHUNDER. **I. L. Rep. 3 Cal. 224.**

Declaratory Decree. 6. 6a.

GOLUCK CHUNDER *v.* NUNDO COOMAR...**I. L. Rep. 2. Cal. 418.**

SPLITTING CAUSE OF ACTION.

See the Cases under **Civil Procedure Code, Act VIII. of 1859, § 7.**

—— Omitting to seek Decree for Possession in Suit for Declaration of Title is not.

See **Civil Procedure Code, Act VIII. of 1859, § 7. 1. 6.**

TULSI RAM *v.* GANGARAM...**I. L. Rep. 1 All. 252.**

DARBO *v.* KESHO RAI...**I. L. Rep. 2 All. 356.**

—— Omission of Part of Claim—Leave to withdraw, with Liberty to file Fresh Suit including Part omitted—Second Suit not barred.

SPLITTING CAUSE OF ACTION—*contd.*

See **Civil Procedure Code, Act VIII. of 1859, § 7. 2.**

ILAHI BAKSH *v.* IMAM BAKSH... **I. L. Rep. 1 All. 324.**

—— Omitting Part of Claim through Ignorance of Facts, caused by Defendant's Fraud, is not.

See **Civil Procedure Code, Act VIII. of 1859, § 7. 3.**

LACHMAN SINGH *v.* SANWAL SINGH.....**I. L. Rep. 1 All. 543.**

—— Separate Accounts of Tradesman.

See **Small Cause Court—Presidency Town. 4.**

CASSUM *v.* THACKUR LILLADHAR... **I. L. Rep. 2 Bom. 570.**

—— Simultaneous Suits.

See **Civil Procedure Code, Act VIII. of 1859, § 7. 4. 5.**

KALESHAR PRASAD *v.* JAGAN NATH. **I. L. Rep. 1 All. 650.**

RAM TURRUN KOONDOO *v.* HOSSEIN BAKSH...**I. L. Rep. 3 Cal. 785.**

STAMP—On Agreement Executed and Stamped in England, subsequently Executed in India.

See **Contract. 17.**

OAKES & Co. *v.* JACKSON.. **I. L. Rep. 1 Mad. 134.**

—— On Assignment and Retransfer by Endorsement of Policy of Assurance.

See **Stamp. 1.**

—— On Bank Memorandum advising Receipt of Money for Customer's Account from Third Person—None Necessary.

See **Stamp. 6.**

—— On Entry in *Hat-Chitta*.

See **Stamp. 5.**

—— Instrument of Transfer.

See **Stamp. 4.**

—— Insufficiently Stamped or Unstamped Document—Admission of—Appeal.

See **Appeal—Civil. 20.**

KHOOB LALL *v.* JUNGLE SINGH... **I. L. Rep. 3 Cal. 787.**

Digitized by Google

STAMP—*contd.*

See **Error not affecting the Merits. 1.**

AFZUL-UN-NISSA *v.* TEJ BAN... **I. L. Rep. 1 All. 725.**

See **Registration. 6.**

SAFDAR ALI KHAN *v.* LACHMAN DAS...**I. L. Rep. 2 All. 554.**

—— Insufficiently Stamped *Hundi*—Evidence—Penalty.

See **Stamp. 3.**

—— On Letter amounting to Release.

See **Registration. 6.**

SAFDAR ALI KHAN *v.* LACHMAN DAS...**I. L. Rep. 2 All. 554.**

—— On Mortgage of Property not in *Esse* at Date of Mortgage.

See **Mortgage. 22.**

MORAN *v.* MITTU BIBEE...**I. L. Rep. 2 Cal. 58.**

—— On Power of Attorney to receive Money.

See **Stamp. 2.**

—— On Release.

See **Registration. 6.**

SAFDAR ALI KHAN *v.* LACHMAN DAS...**I. L. Rep. 2 All. 554.**

—— *Vakalatnama.*

See **Vakalatnama.**

ANONYMOUS. **I. L. Rep. 3 Cal. 767.**

1. —— *Stamp Act XVIII. of* 1869, §§ 34, 41, *Sched. II., Cl.* 5-20—*Policy of Assurance—Assignment and Retransfer by Endorsement.*] A policy of assurance bore three endorsements:—the first, an assignment of all the right, title, and interest of the assured to the P. Bank; the second, a retransfer from the P. Bank to the assured, all claims having been satisfied; the third, an assignment by the assured similar to the first assignment, to Messrs. B. R. S. and Co.

Held, by *Markby* and *Ainslie*, JJ.—That the first and the third endorsements were liable, as collateral instruments under Sched. II., Cl. 20, of Act XVIII. of 1869, to a stamp of one rupee, and that the second endorsement was not chargeable with stamp duty.

Held, by *Garth*, C.J. —That none of the endorsements were chargeable with stamp duty. *In the matter of* THOMSON'S POLICY...**I. L. Rep. 3 Cal. 347, 1877.**

STAMP—*contd.*

2. —— *Assignment—General Power of Attorney.*] An instrument authorizing a person to receive on behalf of another such sums as should become due in the course of the execution of a certain work, is not an assignment of money, but a power of attorney, and is covered by a stamp of Rs. 8, whatever may be the amount recoverable under it (Act XVIII. of 1869, Schedule II., Art. 32). BHAGVANDAS KISHORDAS *v.* ABDUL HUSSEIN MAHOMED ALI. *West* and *Pinhey*, JJ.....**I. L. Rep. 3. Bom. 49, 1878.**

3. —— *Act XVIII. of* 1869 § 20—Hundi—*Insufficient Stamp—Penalty—Evidence.*] Insufficiently stamped *Hundis* cannot be received in evidence even on payment of penalty under § 20 of Act XVIII. of 1869. MOTHOORA MOHUN ROY *v.* PEARY MOHUN SHAW. *Pontifex*, J.... **I. L. Rep. 4 Cal. 259; 2 Cal. Rep. 409, 1878.**

4. —— *Act XVIII. of* 1869, § 29, Sched. II., Art. 38—*Instrument of Transfer—Intention to evade Payment of Stamp Duty.*] The accused was prosecuted under Act XVIII. of 1869, § 29, for executing a document on insufficiently stamped paper. The document recited that "whereas *A.* and *B.* have sold to me two gandas, three cowries of land under a *kobala*, dated 9th of Jeyt 1283, in lieu of a consideration of Rs. 695, and whereas I have returned to the vendors in all four cottas of land, worth about Rs. 25, and whereas in lieu of the said land the said vendors have given me four cottas of *Zerait* land held by them, now I or my heirs shall have no objection or contest whatever in regard to the mutual exchange of land between the vendors and me, the purchaser, hence I have executed this *chitti* by way of conveyance or deed of exchange which may be of service when required." This document bore a stamp of eight annas, and was executed only by the accused, and presented by him for registration:—

Held, that the document was an instrument of transfer within the meaning of Art 38, Sched. II., Act XVIII. of 1869.

Held also, that a Magistrate is bound, for the purpose of ascertaining whether any and what penalty should be imposed, to consider whether a person prosecuted under § 29 of that Act had any intention to defraud by evading payment of stamp duty. EMPRESS *v.* DWARKANATH CHOWDHRY. *Garth*, C.J., *Kemp*, *Macpherson*, *Markby*, and *Ainslie*, JJ.....**I. L. Rep. 2 Cal. 399, 1877.**

Digitized by Google

STAMP—*contd.*

5. —— *Act XVIII. of* 1869, Sched. II., Art. 5—*Entry in* Hat-chitta.] When an account in a *hat-chitta* has two sides to it, the one headed "amount advanced," and the other headed "amount received"; and the amount actually due on such account varies from time to time, and depends on the relation of the amount advanced to the amount received, and the signature or seal of the borrower is affixed to each entry showing an advance, such an entry is not a note or memorandum whereby any debt is acknowledged to be due, and does not require a stamp under Art. 5, Sched. II. of Act XVIII. of 1869. BROJENDER COOMAR *v.* BROMOMOYE CHOWDHRANI. *White* and *Mitter*, JJ.....**I. L. Rep. 4 Cal. 885; 3 Cal. Rep. 520, 1878.**

6. —— *Act XVIII. of* 1869, Sched. II., Art. 7—*Bank Memorandum Receipt.*] A Bank memorandum informing one of their customers that money has been paid to his account by a third person and has been credited to that account, does not require to be stamped, under Art. 7, Sched. II. of Act XVIII. of 1869. *In the matter of* ACT XVIII. OF 1869 *and of* THE UNCOVENANTED SERVICE BANK. *Garth*, C.J., *Jackson* and *Pontifex*, JJ...**I. L. Rep. 4 Cal. 829; 3 Cal. Rep. 597, 1879.**

7. —— *Penalty—Tender of.*] Where an unstamped document to which the provisions of § 20 of the Stamp Act XVIII. of 1869 apply, has been rejected as inadmissible in evidence for want of a proper stamp, the amount of stamp duty and penalty prescribed not being tendered when the document was offered in evidence and rejected, the Appellate Court has no authority to direct the reception of the instrument on a subsequent tender of the amount. CHAMPABATY *v.* BIBI JIBUN. *Jackson* and *Tottenham*, JJ...**I. L. Rep. 4 Cal. 213, 1878.**

8. —— *Act XVIII. of* 1869—*Conveyance—Non-Liability to Additional Duty as Indemnity Bond.*] Where a document, purporting to be a conveyance, and for only one consideration, contains words which merely express, though very informally, the usual covenants for title which every properly drawn English conveyance contains, those words cannot be considered as constituting an indemnity bond, so as to render the document liable to stamp duty as an indemnity bond in addition to the stamp duty to which it is liable as a conveyance. ANON. *Morgan*, C.J., and *Holloway*, J....**I. L. Rep. 1 Mad. 133, 1876.**

STAMP—*contd.*

STAMP ACT XVIII. of 1869—§ 12.

See **Probate Duty. 1.**

In the matter of the last Will and Testament of RAMCHANDRA LAKSHMAN.....**I. L. Rep. 1 Bom. 118.**

—— § 20.

See **Stamp. 3.**

—— § 29.

See **Stamp. 4.**

—— Schedule II., Art. 5.

See **Stamp. 5.**

—— Schedule II., Art. 7.

See **Stamp. 6.**

—— Schedule II., Art. 20.

See **Stamp. 3.**

—— § 43 — Magistrate authorized under—to Prosecute cannot try the Persons he prosecutes.

See **Procedure—Criminal.**

EMPRESS *v.* GANGADHUR BHUNJO. **I. L. Rep. 3 Cal. 622.**

—— Sched. II., Art. 32—Power of Attorney.

See **Stamp. 2.**

BHAGVANDAS KISHORDAS *v.* ABDUL HUSSAIN MAHOMED ALI...**I. L. Rep. 3 Bom. 49.**

—— Sched. I., Cl. 10—Mortgage of Property not in *Esse* at Date of Mortgage.

See **Mortgage. 22.**

MORAN *v.* MITTU BIBEE.....**I. L. Rep. 2 Cal. 58.**

—— Sched. II., Art. 38—Instrument of Transfer.

See **Stamp. 4.**

EMPRESS *v.* DWARKANATH CHOWDHRY.....**I. L. Rep. 2 Cal. 399.**

STAMP DUTY—Intention to Evade.

See **Stamp. 4.**

EMPRESS *v.* DWARKANATH CHOWDHRY.....**I. L. Rep. 2 Cal. 399.**

Digitized by Google

STANDING CROPS—*Immoveable Property—Limitation Act IX. of* 1871, *Sched. II., Art. 26—Act XV. of* 1877, *Sched. II., Arts.* 36, 37.] Standing crops are immoveable property within the meaning of the Limitation Act IX. of 1871, and to a suit for compensation for crops wrongfully removed by the defendant, Art. 40 and not Art. 26 of Sched. II. of Act IX. of 1871 is applicable. The definition given of immoveable property in the Registration Acts is expressly given for the purposes of those Acts, and cannot govern the decision of questions of limitation. PANDAH GAZI *v.* JENNUDDI. *Mitter* and *Maclean*, JJ...**I. L. Rep. 4 Cal. 665; 2 Cal. Rep. 526, 1878.**

STATUTE IMPOSING TAX—Construction of.

See **Madras Act III. of 1871.**

LEMAN *v.* DAMODARAYA.....**I. L. Rep. 1 Mad. 153.**

STATUTE 53 GEO. III., C. 155, §§ 98, 99, 100.

See **Jurisdiction. 13.**

COLLECTOR OF SEA CUSTOMS, MADRAS *v.* PANNIAR CHITHAMBARAM.....**I. L. Rep. 1 Mad. 89.**

STATUTE 3 AND 4 Wm. IV., C 85.

See **Legislative Power of the Governor General in Council. 1. 2.**

EMPRESS *v.* BURAH...**I. L. Rep. 3 Cal. 63; I. L. Rep. 4 Cal. 172; L. Rep. 5 I. A. 178; L. Rep. 3 App. Ca. 889.**

—— § 43.

See **Cession of Territory. 2.**

DAMODHAR *v.* GANESH...**10 Bom. H. C. Rep. 37; I. L. Rep. 1 Bom. 367; L. Rep. 3 I. A. 102; L. Rep. 1 App. Ca. 332.**

STATUTE 6 AND 7 VICT., C. 94.

See **Offence committed in Foreign Territory.**

EMPRESS *v.* DOSSAJI GULAM HUSSEIN...**I. L. Rep. 3 Bom. 334.**

—— Jurisdiction of British Consul at Zanzibar.

See **Zanzibar.**

WAGJI KORJI *v.* THARIA TOPAN.. **I. L. Rep. 3 Bom. 58.**

STATUTE 11 AND 12 VICT., C. 21.

See **Indian Insolvent Act.**

STATUTE 15 AND 16 VICT., C. 86, § 50.

See **Declaratory Decree. 2.**

KATHAMA NATCHIAR *v.* DORASINGA TEVER...**L. Rep. 2 I. A. 169; 15 Beng. L. Rep. 83.**

STATUTE 16 AND 17 VICT., C. 95.

See **Legislative Power of the Governor General in Council. 2.**

EMPRESS *v.* BURAH...**I. L. Rep. 3 Cal. 63; I. L. Rep. 4 Cal. 172; L. Rep. 5 I. A. 178; L. Rep. 3 App. Ca. 889.**

STATUTE 17 AND 18 VICT., C. 77.

See **Legislative Power of the Governor General in Council. 2.**

EMPRESS *v.* BURAH...**I. L. Rep. 3 Cal. 63; I. L. Rep. 4 Cal. 172; L. Rep. 5 I. A. 178; L. Rep. 3 App. Ca. 889.**

STATUTE 21 AND 22 VICT., C 106.

See **Cession of Territory. 2.**

DAMODHAR *v.* GANESH...**10 Bom. H. C. Rep. 37; I. L. Rep. 1 Bom. 367; L. Rep. 3 I. A. 102; L. Rep. 1 App. Ca. 332.**

STATUTE 24 AND 25 VICT., C. 67, § 22.

See **Cession of Territory. 2.**

DAMODHAR *v.* GANESH...**10 Bom. H. C. Rep. 37; I. L. Rep. 1 Bom. 367; L. Rep. 3 I. A. 102; L. Rep. 1 App. Ca. 332.**

—— § 22.

See **Legislative Power of the Governor General in Council. 2.**

EMPRESS *v.* BURAH...**I. L. Rep. 3. Cal. 63; I. L. Rep. 4 Cal. 172; L. Rep. 5 I. A. 178; L. Rep. 3 App. Ca. 889.**

—— § 22—Power of Legislature to affect Jurisdiction of High Court.

See **Act VI. of 1874, § 5.**

FEDA HOSSEIN...**I. L. Rep. 1 Cal. 431.**

Digitized by Google

STATUTE 24 AND 25 VICT., C. 104.

See **Jurisdiction. 13.**

COLLECTOR OF SEA CUSTOMS, MADRAS *v.* PANNIAR CHITHAMBARAM...**I. L. Rep. 1 Mad. 89.**

See **Legislative Power of the Governor General in Council. 2.**

EMPRESS *v.* BURAH...**I. L. Rep. 4 Cal. 172; I. L. Rep. 3 Cal. 63; L. Rep. 5 I. A. 178; L. Rep. 3 App. Ca. 889.**

—— § 9.

See **Cession of Territory. 2.**

DAMODHAR *v.* GANESH...**10 Bom. H. C. Rep. 37; I. L. Rep. 1 Bom. 367; L. Rep. 3 I. A. 102; L. Rep. 1 App. Ca. 332.**

See **Legislative Power of the Governor General in Council. 2.**

EMPRESS *v.* BURAH...**I. L. Rep. 3 Cal. 63; I. L. Rep. 4 Cal. 172; L. Rep. 5 I. A. 178; L. Rep. 3 App. Ca. 889.**

—— § 9—Power of Legislature to affect Jurisdiction of High Court.

See **Act VI. of 1874, § 5.**

FEDA HOSSEIN...**I. L. Rep. 1 Cal. 431.**

1. —— § 15.—*Superintendence of the High Court—Act XXIII. of* 1861, § 27.] The High Court will not under § 15 of Stat. 24 and 25 Vict., C. 104, interfere with the decisions of the Courts below in a suit of a nature cognizable by a Small Cause Court, and in which, therefore, a special appeal is forbidden by Act XXIII. of 1861, § 27, where no question of the jurisdiction of the lower Courts is involved.

The object of that section was to enable the High Court to control the lower Courts or to put them in motion, when on the one hand they exceed their jurisdiction, by entertaining suits which they have no right to entertain, or on the other hand refuse to exercise powers which they are bound by law to exercise. *In the matter of the Petition of* LUKHYKANT BOSE. *Garth*, C.J., and *Birch*, J.....**I. L. Rep. 1 Cal. 180, 1875.**

2. —— § 15—*Appeal.*] *Per Birch* J. — A party who has preferred an appeal to the High Court when the law gives him no appeal is not entitled at the hearing to ask the Court to treat it as an application for the exercise of its extraordinary jurisdiction under Stat. 24 and 25

STATUTE 24 AND 25 VICT., C. 104— *contd.*

Vict., C. 104, § 15. *In the matter of the Petition of* SOORJA KANT ACHRAJ.....**I. L. Rep. 1 Cal. 383.**

S. C. under. **Beng. Reg. VIII. of 1819, § 6.**

3. —— § 15 — *Superintendence of High Court.*] Section 15 of Stat. 24 and 25 Vict., C. 104, confers on the High Court no revisional power, no power to interfere with or set aside the judicial proceedings of a Subordinate Court, but confers on the High Court administrative authority, and not judicial powers. It would be competent to the High Court in the exercise of its powers of superintendence to direct a Subordinate Court to do its duty, or to abstain from taking action in matters of which it has not cognizance, but the High Court is not competent in the exercise of this authority to interfere and set right the order of a Subordinate Court on the ground that the order of the Subordinate Court has proceeded on an error of law, or an error of fact.

Where, therefore, on appeal by the judgment debtor against an order confirming a sale of immoveable property in the execution of a decree, the lower Appellate Court set aside the sale, on a ground not provided by law, and the auction purchasers applied under that section to the High Court to cancel the order of the lower Appellate Court, the High Court declined to interfere. TEJ RAM *v.* HARSUKH...**I. L. Rep. 1 All. 101, 1875, F. B.**

4. —— § 15 — *Superintendence of High Court.*] Where a Subordinate Court has obviously failed to perform its duty, and there is no remedy by appeal, the High Court has power, under § 15 of Stat. 24 and 25 Vict., C. 104, to point out to the Subordinate Court its error, and to direct it to proceed according to law.

Where a Subordinate Judge rejected an application for a review of a judgment, refusing to consider the grounds of the application, because the decree of which the review was sought was passed by his predecessor, the High Court, under its powers of superintendence, directed the Subordinate Judge to consider the application. *In the matter of the Petition of* MATHRA PARSHAD. *Stuart*, C.J., and *Turner*, J.....**I. L. Rep. 1 All. 296, 1876.**

Digitized by Google

STATUTE 24 AND 25 VICT., C. 104— *contd.*

5. —— § 15—*Superintendence of the High Court—Act X. of* 1872, § 518, *Order under.*] A Magistrate, having regard to the circumstances of the case as they appeared from the evidence of witnesses taken before him and from police reports made an order on the petitioners, the proprietors of an old established *hât*, prohibiting them from holding their *hât* on the same day as that on which a newly-established *hât*, in the proximity, was held:—

Held, that as the Magistrate stated that a riot or affray was imminent, and that he considered that the direction he gave tended to prevent, and was likely to prevent, a riot and affray, and as the facts stated by the Magistrate showed that there were some grounds for his opinion, he had power, under § 518 of Act X. of 1872, to make the order complained of, and the High Court could not interfere with such order under § 15 of Stat. 24 and 25 Vict., C. 104, nor on any other ground, as, under § 520, Act X. of 1872, such order was not a judicial proceeding. *In the matter of the Petition of* CHUNDER NATH SEN... **I. L. Rep. 2 Cal. 293, 1876, F. B.**

6. —— § 15—*Superintendence of the High Court.*] The High Court will not, under Stat. 24 and 25 Vict., C. 104, § 15, interfere with judgments, decrees, or orders of a lower Court, from which no appeal is given by law, on the bare grounds that they are erroneous in law, or are based on a wrong conclusion of facts. There must be some special ground established to justify the interference of the High Court in such cases.

Where the appellant has another remedy provided him by law, *e.g.*, a regular suit, the Court is reluctant to interfere, though the remedy may not be quite complete.

Per Markby, J.—The High Court will always, under its power of superintendence, consider charges of judicial misconduct in the Court below, *i.e.*, not only misconduct of a moral kind, but an entire misconception by the Court below of the duty which it had to perform. MADHUB CHUNDER GIREE *v.* SHAM CHAND GIREE. *Markby* and *Mitter*, JJ...**I. L. Rep. 3 Cal. 243, 1877.**

S. C. under **Limitation. 35.**

7. —— § 15.—*Superintendence of the High Court—Appeal—Putting a Party on the Record who was not Legal Representative of Deceased.*] A decree having been obtained against a British subject domiciled in India, the lower Court, on the death, intestate, of the defendant, before letters of administration were granted to his estate, and without any inquiry as to who were his legal personal representatives, revived the decree against the appellant, one of his children, and ordered execution to proceed:—

Held, that though no appeal lay from this order, yet, as it was clearly erroneous, and as it must lead to the greatest possible confusion and injury to the interests of the parties if the execution were proceeded with in the shape in which the proceedings stood, the High Court was justified in setting the order aside under § 15 of Stat. 24 and 25 Vict., C. 104. POGOSE *v.* CATCHICK. *Markby* and *Prinsep*, JJ.....**I. L. Rep. 3 Cal. 708; 2 Cal. Rep. 278, 1878.**

But where the Subordinate Judge, upon the death of the defendant judgment-debtor, issued a summons to his eldest son to show cause why he should not be made a party to the suit, and why the decree should not be executed against him, and such eldest son (not having taken out letters of administration to the estate of his deceased father) appeared in obedience to the summons and objected to be made a party, not on the ground that he had not been duly made the legal representative of the deceased, but that he had no longer anything to do with his property, and the Subordinate Judge, overruling the objections, made him a defendant on the record as representing the deceased, and ordered a sale of property to proceed accordingly:—

Held, that the order of the Subordinate Judge, though erroneous, and one against which an appeal would lie if preferred within the time prescribed by law, was not made without jurisdiction, and that as the order was not appealed against in due time, the High Court would not interfere under Stat. 24 and 25 Vict., C. 104, § 15. *In the matter of* POGOSE. *Garth*, C.J., and *Mitter*, J.....**I. L. Rep. 3 Cal. 710, n, 1877.**

8. —— § 15—*Superintendence of High Court.*] The High Court cannot interfere in the exercise of its powers of extraordinary jurisdiction, under Stat. 24 and 25 Vict., C. 104, § 15, unless all other remedies provided by law have been exhausted. Where, therefore, certain persons who had been convicted by a Magistrate of rioting, without appealing to the Sessions Court, as they had a right to do, moved the High Court under

Digitized by Google

STATUTE 24 AND 25 VICT., C. 104—*contd.*

§ 15 of Stat. 24 and 25 Vict., C. 104, the High Court refused to interfere. EMPRESS *v.* RAJKOOMAR SINGH. *Ainslie* and *McDonnell*, JJ...**I. L. Rep. 3 Cal. 573, 577; 1 Cal. Rep. 352, 1878.**

S. C. under **Land held by Joint Owners.**

STATUTE 39 AND 40 VICT., C. 46—Jurisdiction of British Consul at Zanzibar.

See **Zanzibar.**

WAGJI KORJI *v.* THARIA TOPAN... **I. L. Rep. 3 Bom. 58.**

STATUTE 40 VICT., C. 7, § 99.

See **Execution of Decree. 15.**

MERCER *v.* NARPAT RAI ..**I. L. Rep. 1 All. 730.**

STAY OF EXECUTION—Application for—is not an Application to enforce or keep the Decree in force.

See **Limitation. 78.**

FAKIR MUHAMMAD *v.* GHULAM HASSAN...**I. L. Rep. 1 All. 580.**

—— Pending Appeal — Sureties — Extent of Liability.

See **Civil Procedure Code, Act VIII. of 1859, § 338.**

SHIVLAL KHUBCHAND *v.* APAJI BHIVRAV...**I. L. Rep. 2 Bom. 654.**

—— Security for—Deposit of Money and Jewels.

See **Execution of Decree. 4.**

SHEO GHOLAM SAHOO *v.* RAHUT HOSSEIN...**I. L. Rep. 4 Cal. 6.**

—— *Act VIII. of* 1859, § 338 — *Act XXIII. of* 1861, § 38 — *Miscellaneous Proceedings.*] The term "miscellaneous proceedings" in § 38 of Act XXIII. of 1861 embraces all proceedings, not being regular suits or appeals, for which no procedure is expressly provided, and in that sense it embraces proceedings in execution of a decree.

Therefore, pending the determination of a miscellaneous regular appeal to the High Court against an order of the Court of first instance refusing to postpone a sale in execution of a decree, the High Court has power, under § 38 of Act XXIII. of 1861, and § 538 of Act VIII. of 1859, to stay execution and postpone the sale. *In the matter of the Petition of* HARSHANKAR PARSHAD...**I. L. Rep. 1 All. 178, 1876, F. B.**

STHANAM LANDS—Alienability of.

See **Malabar Law. 1.**

CHEMMINIKARA M. NAIR *v.* KILIYANAWAN U. MENON...**I. L. Rep. 1 Mad. 88.**

STOLEN CURRENCY NOTE—Cashing—Title of Original Owner.

See **Government Currency Note.**

EMPRESS *v.* JOGGESSUR MOCHI...**I. L. Rep. 3 Cal. 379.**

STOLEN PROPERTY—Order for Delivery of—Appeal.

See **Government Currency Note.**

EMPRESS *v.* JOGESSUR MOCHI...**I. L. Rep. 3 Cal. 379.**

See **Criminal Procedure Code, Act X. of 1872, §§ 415 to 419. 1, 2.**

In re ANPURNABAI...**I. L. Rep. 1 Bom. 633.**

EMPRESS *v.* NILAMBER.....**I. L. Rep. 2 All. 276.**

—— Voluntarily Assisting in Concealing.

See **Conviction on Several Charges. 2.**

EMPRESS *v.* RAMESHAR RAI...**I. L. Rep. 1 All. 379.**

STRANGER TO THE RECORD, LIABILITY OF, FOR COSTS OF SUIT.

See **Champerty. 2.**

RAM COOMAR *v.* CHUNDER CANTO. **L. Rep. 4 I. A. 23; I. L. Rep. 2 Cal. 233.**

STRIDHAN—Daughter's Inheritance from Father not—Mitakshara Law.

See **Hindu Law—Inheritance—Daughter. 4.**

CHOTAY LALL *v.* CHUNNOO LALL. **L. Rep. 6 I. A. 15; I. L. Rep. 4 Cal. 744.**

—— Descent of—Property given to Married Woman after Marriage by Husband's Father's Sister's Son.

See **Hindu Law — Inheritance—Stridhan.**

HURRYMOHUN SHAHA *v.* SHONATUN SHAHA...**I. L. Rep. 1 Cal. 275.**

Digitized by Google

STRIDHAN—*contd.*

—— Immoveables given by Husband not.
See **Hindu Law—Gift. 3.**
RUDR NARAIN SINGH *v.* RUP KUAR.....**I. L. Rep. 1 All. 734.**

—— Immoveable Property inherited by Grandmother from Grandson is not.
See **Hindu Law—Stridhan. 2.**
PHUKAR SINGH *v.* RANJIT SINGH. **I. L. Rep. 1 All. 661.**

—— Immoveable Property purchased with.
See **Hindu Law—Alienation by Widow. 3.**
Hindu Law—Stridhan. 3.
Hindu Law—Will. 9.
VENKATA RAMA RAU *v.* VENKATA SURIYA RAU...**I. L. Rep. 1 Mad. 281.**

—— Incontinence of Hindu Woman does not disqualify her from Succeeding to.
See **Hindu Law—Disqualification to Inherit. 3.**
MUSSAMAT GANGA JATI *v.* GHASITA.....**I. L. Rep. 1 All. 46.**

—— Inherited Property not—according to Mitakshara and Bengal Law.
See **Hindu Law—Stridhan. 1.**
JUGMOHAN *v.* SARODAMOYEE.....**I. L. Rep. 3 Cal. 149.**

—— Moveable Property given by Husband.
See **Hindu Law—Stridhan. 3.**
VENKATA RAMA RAU *v.* VENKATA SURIYA RAU...**I. L. Rep. 1 Mad. 281.**

—— Property acquired under *Sunnud* from Government.
See **Act I. of 1869, § 22, Cl. 11.**
BRIJ INDAR *v.* RANEE JANKI KOER. **L. Rep. 5 I. A. 1.**

—— Succession to—Incontinence.
See **Hindu Law—Disqualification to Inherit. 3.**
MUSSAMAT GANGA JATI *v.* GHASITA...**I. L. Rep. 1 All. 46.**

SUBJECT-MATTER IN DISPUTE.
See **Bengal Civil Courts Act VI. of 1871, § 22.**
KALI CHARAN *v.* AJUDHIA RAI... **I. L. Rep. 2 All. 148.**

SUBJECT-MATTER OF SUIT.
See **Jurisdiction. 19. 20.**
BAI MAKHOR *v.* BULAKHI...**I. L. Rep. 1 Bom. 538.**
KALU *v.* VISHRAM .....**Ibid 543.**

—— Suit to redeem Mortgage—Denial of Mortgage—Value of land.
See **Jurisdiction. 15.**
KALIAN DAS *v.* NAWAL SINGH... **I. L. Rep. 1 All. 620.**

SUBMERGED LAND—Non-Payment of Rent on account of—Extinguishment thereby of Right of Occupancy in—on their Re-formation.
See **Extinguishment of Right of Occupancy.**
HEMNATH DUTT *v.* ASHGUR SINDAR...**I. L. Rep. 4 Cal. 894.**

SUBMERGED LAND, RE-FORMATION OF.
See **Alluvial Lands.**
RADHA PROSHAD *v.* RAM COOMAR. **I. L. Rep. 3 Cal. 796.**
See **Re-formation of Submerged Land.**
HURSUHAI SINGH *v.* SYUD LOOTF ALI KHAN...**L. Rep. 2 I. A. 28.**

SUBORDINATE JUDGE—Jurisdiction of.
See Cases under **Jurisdiction. 18. 19. 20.**

—— Jurisdiction of—Suit to redeem Mortgage—Denial of Mortgage—Value of Land exceeding Rs. 1,000.
See **Jurisdiction. 15.**
KALIAN DAS *v.* NAWAL SINGH... **I. L. Rep. 1 All. 620.**

—— Powers of—Conferred on Small Cause Court Judge.
See **Principal and Surety. 1.**
CROSTHWAITE *v.* HAMILTON...**I. L. Rep. 1 All. 87.**

—— Power of—to File an Award.
See **Award. 1.**
BALKRISHNA *v.* LAKHSMAN...**I. L. Rep. 3 Bom. 219.**

—— Relative Position of—to District Judge and High Court for purposes of Sanction to Prosecute.
See **Sanction to Prosecute. 4.**
IMPX. *v.* LASKHMAN...**I. L. Rep. 2 Bom. 481.**

Digitized by Google

SUBORDINATION OF MAGISTRATE, FIRST CLASS, TO THE MAGISTRATE OF THE DISTRICT, AND TO THE SESSIONS COURT.

See **Sanction to Prosecute. 5.**

GUR DAYAL...**I. L. Rep. 2 All. 205.**

SUBORDINATION OF REVENUE COURTS TO HIGH COURT AT ALLAHABAD.

See **Sanction to Prosecute. 3.**

EMPRESS *v.* SABSUKH...**I. L. Rep. 2 All. 533.**

SUB-SETTLEMENT—Modification of Claim to Direct Settlement to one for a.

See **Act I. of 1869. 2. 4.**

WIDOW OF SHUNKUR SAHAI *v.* RAJAH KASHI PERSHAD...**L. Rep. 4 I. A. 198, n.**

GOURI SHUNKUR *v.* MAHARAJAH OF BULRAMPORE...**L. Rep. 6 I. A. 1; I. L. Rep. 3 Cal 839.**

—— Right of Mortgagee prior to the Confiscation of Oudh Estates to.

See **Act I. of 1869. 4.**

GOURI SHUNKUR *v.* MAHARAJAH OF BULRAMPORE...**L. Rep. 6 I. A. 1; I. L. Rep. 4 Cal. 839.**

SUBSTANCE OF EVIDENCE—Record of —in appealable Case.

See **Summary Trial.**

EMPRESS *v.* KARAN SINGH...**I. L. Rep. 1 All. 680.**

SUBSTANTIAL QUESTION OF LAW—Appeal to Privy Council.

See **Act VI. of 1874, § 5.**

MORAN *v.* MITTU BIBEE.....**I. L. Rep. 2 Cal. 228.**

"SUBSTANTIAL PERSONS."

See **Beng. Reg. VIII. of 1819, § 8, Cl. 2.**

RAM SABUK BOSE *v.* MONMOHINI DOSSEE...**L. Rep. 2 I. A. 71.**

SUBSTITUTED SERVICE OF SUMMONS.

See **Civil Procedure Code, Act X. of 1877, § 83.**

MIRZA BIBANEE *v.* SYAD HOOSEIN. **I. L. Rep. 2 Bom. 449.**

SUCCESSION.

See the Index heading **Inheritance.**

SUCCESSION TO MOVEABLE PROPERTY—Marriage in India between persons with English Domicile.

See **Indian Succession Act X. of 1865, § 4.**

MILLER *v.* ADMINISTRATOR GENERAL OF BENGAL...**I. L. Rep. 1 Cal. 412.**

SUCCESSION TO IMPARTIBLE ZEMINDARY FOR WHICH NO PERMANENT SUNNUD HAS BEEN ISSUED—*Right of Government to Nominate a Successor.*] The Hindu zemindar of Chinnakimid, an hereditary impartible zemindary, died without legitimate male issue, leaving a widow. The appellant, his undivided half-brother, was placed in possession by the Collector as successor to the deceased; the Government claiming to nominate a successor in cases of zemindaries for which, though permanently settled, no permanent *sunnud* had been issued.

Thereafter the widow adopted the respondent as a son to the deceased, in pursuance of his alleged wittten authority in that behalf, and with the consent of the natural father of the respondent, himself a *sapinda* of the deceased, though separate in estate from him. In a suit brought by the respondent, by his adoptive mother and guardian, to recover the zemindary with mesne profits:—

Held, that there was no foundation for the claim of the Government to nominate a successor, and that it was settled law that the title to the zemindary is to be ascertained by the ordinary law of succession. The *Marungapury Case* (L. Rep. 1 I. A. 282) approved.

SRI RAGUNADHA *v.* SRI BROZO KISHORO...**L. Rep. 3 I. A. 154, 1876; I. L. Rep. 1 Mad. 69.**

S. C. under **Hindu Law—Adoption. 11.**

SUDRAS—Adoption of Mother's Sister's Son, Valid among.

See **Hindu Law—Adoption. 4.**

CHINNA NAGAYYA *v.* PEDDA NAGAYYA...**I. L. Rep. 1 Mad. 62.**

Digitized by Google

SUDRAS—*contd.*

—— Adoption of Only Son.

See **Hindu Law—Adoption. 2. 3.**

MANICK CHUNDER *v.* BHUGOBUTTY.....**I. L. Rep. 3 Cal. 443.**

JANOKEE *v.* GOPAL ..**I. L. Rep. 2. Cal. 365.**

—— Illegitimate Son of—Right to Inherit.

See **Hindu Law — Inheritance — Illegitimate Son. 3. 6.**

SARASUTI *v.* MANNU...**I. L. Rep. 2 All. 134.**

VIRARAMUTHI UDAYAN *v.* SINGARAVELU...**I. L. Rep. 1 Mad. 306.**

—— Illegitimate Son of—Right of—to Maintenance.

See **Hindu Law—Maintenance of Illegitimate Son. 1.**

VIRARAMUTHI UDAYAN *v.* SINGARAVELU...**I. L. Rep. 1 Mad. 306.**

—— Lingayets are.

See **Hindu Law—Adoption. 6.**

GOPAL *v.* HANMANT...**I. L. Rep. 3 Bom. 273.**

"SUIT."

See **Attorney and Client. 1.**

ABA ISMAIL *v.* ABA THARA...**I. L. Rep. 1 Bom. 253.**

—— Application for Execution of Decree is not, a.

See **Limitation. 40.**

JIWAN SINGH *v.* SARNAM SINGH .. **I. L. Rep. 1 All. 97.**

—— *Act IX. of* 1871.] The word "suits" in Act IX. of 1871 does not include "applications" or "appeals." DHONNESSUR KOOER *v.* ROY GOODER SAHOY...**I. L. Rep. 2 Cal. 337, 1877, F. B.**

S. C. under **Limitation. 82.**

SUIT BROUGHT AFTER ACT IX. OF 1871 CAME INTO OPERATION ON CAUSE OF ACTION BARRED BY ACT XIV. OF 1859.

See **Limitation. 15. 16. 17.**

NOCOOR CHUNDER BOSE *v.* KALLY COOMAR GHOSE...**I. L. Rep. 1 Cal. 328, 1876.**

ABDUL KARIM *v.* MANJI HANSRAJ. **I. L. Rep. 1 Bom. 295, p. 305.**

RAMCHANDRA *v.* SOMAR.....**I. L. Rep. 1 Bom. 305, n.**

RAM CHUNDER GHOSAUL *v.* JUGGUTMONMOHINEY DABEE...**I. L. Rep. 4 Cal. 283, 1878.**

See **Hindu Law—Maintenance of Widow. 6.**

KRISHNA *v.* OKILMONEY.....**I. L. Rep. 3 Cal. 331.**

SUIT FOR CALLS.

See **Agreement to take Shares.**

ANANDJI VISRAM *v.* NARIAD S. & W. CO...**I. L. Rep. 1 Bom. 320.**

See **Company—Winding up—Contributory.**

LONDON, BOMBAY, AND MEDITERRANEAN BANK *v.* BHANJI ZUTANI. **I. L. Rep. 2 Bom. 116.**

SUIT BY A CERTIFIED PURCHASER.

See **Civil Procedure Code, Act VIII. of 1859, § 260.**

LOKHEE NARRAIN RAY CHOWDHRY *v.* KALYPUDDO BANDOPADHYA. **L. Rep. 2 I. A. 154.**

SUIT COGNIZABLE BY SMALL CAUSE COURT—Suit for *Baluta Haks* is.

See **Baluta.**

NARSI *v.* NARO.....**I. L. Rep. 3 Bom. 28.**

—— Suit for Balance of Rents collected by Defendant as Plaintiff's Agent is.

See **Small Cause Court—Mofussil. 7.**

DYEBUKEE *v.* MUDHOO...**I. L. Rep. 1 Cal. 123.**

Digitized by Google

SUIT COGNIZABLE BY SMALL CAUSE COURT—*contd.*

—— Suit for "*Huq-i-Chaharum*" or other Zemindary Cesses is not a—if not founded on Contract.

See **Small Cause Court—Mofussil. 4.**

NANKU *v.* BOARD OF REVENUE... **I. L. Rep. 1 All. 444.**

—— Suit for Maintenance not based on Contract is not.

See **Small Cause Court—Mofussil. 1. 2.**

APPAJI *v.* GANGABAI ..**I. L. Rep. 2 Bom. 632.**

SIDLINGAPA *v.* SIDAVA...**Ibid. 624.**

—— Suit for Moveable Property less than Rs. 500 Attached in Execution is.

See **Small Cause Court—Mofussil. 3.**

NATHU *v.* KALIDAS...**I. L. Rep. 2 Bom. 365.**

—— Suit for Value of Crops illegally distrained is not.

See **Beng. Act VIII. of 1869, § 98. 1**

HYDER ALI *v.* JAFAR ALI...**I. L. Rep. 1 Cal. 133.**

—— Suit for Money less than Rs. 500 paid in Excess under Execution of Decree is.

See **Act XXIII. of 1861, § 11. 2.**

AGRA SAVINGS BANK *v.* SRI RAM MITTER...**I. L. Rep. 1 All. 388.**

—— Suit against Municipality is not.

See **Suit against Municipality. 1.**

AHMEDABAD MUNICIPALITY *v.* MAHOMED JAMAL...**I. L. Rep. 3 Bom. 146.**

—— Suit by *Mulgar* to recover from Sub-Lessee Increased Rent on account of Increase of his own Assessment is not.

See **Small Cause Court—Mofussil. 5**

BABSHETTI *v.* VENKATARAMANA. **I. L. Rep. 3 Bom. 154.**

—— Question of Title incidentally determined—no Special Appeal.

See **Appeal—Civil. 32.**

MOHESH MAHTO *v.* SHEIKH PIRU. **I. L. Rep. 2 Cal. 470.**

See **Res Judicata. 8.**

INAYAT KHAN *v.* RAHMAT BIBI. **I. L. Rep. 2 All. 97.**

SUIT AGAINST COLLECTOR—When appointed to take Charge of the Estate of a Minor.

See **Bombay Minors Act XX. of 1864, §§ 11, 15.**

NARSINGRAV *v.* LUXUMAN...**I. L. Rep. 1 Bom. 318.**

—— For Acts done as President of Municipality under Act XXVI. of 1850, § 6.

See **Jurisdiction. 18.**

GANGADHAR *v.* COLLECTOR OF AHMEDNAGAR ..**I. L. Rep. 1 Bom. 628.**

SUIT AGAINST COLLECTOR OF SEA CUSTOMS AT MADRAS.

See **Jurisdiction. 13.**

COLLECTOR OF SEA CUSTOMS, MADRAS, *v.* PUNNIAR CHITHAMBARAM.....**I. L. Rep. 1 Mad. 89.**

SUIT COMMENCED IN FORMA PAUPERIS BUT CONTINUED IN ORDINARY FORM — Computation of Period of Limitation to.

See **Limitation. 37.**

CHUNDER MOHUN ROY *v.* BHUBON MOHINI DABEA...**I. L. Rep. 2 Cal. 389.**

See **Petition for Leave to Sue in Forma Pauperis. 1. 2.**

SKINNER *v.* ORDE ..**I. L. Rep. 1 All. 230; L. Rep. 6 I. A. 126.**

SUIT COMMENCED IN ORDINARY FORM CONTINUED IN FORMA PAUPERIS.

See **Suit in Forma Pauperis. 1.**

NIRMAL *v.* DAYAL NATH...**I. L. Rep. 2 Cal. 130.**

SUIT TO COMPEL ACCEPTANCE OF PATTA—"Landholder."

See **Madras Act VIII. of 1865, § 1.**

ZINULABDIN ROWTEN *v.* VIJIEN VIRAPATREN...**I. L. Rep. 1 Mad. 49.**

See **Madras Act VIII. of 1869, § 9.**

SAYUD MIAH CHAND SAHIB *v.* LAKSHMANA AIYANGAR.....**I. L. Rep. 1 Mad. 45.**

Digitized by Google

SUIT TO COMPEL REGISTRATION.

See **Registration. 32.**

SUIT FOR CONFIRMATION OF POSSESSION — *Variance — Change of Form of Suit.*] The plaintiff sued for an adjudication of his right to, and confirmation of possession of certain lands, on the allegation that they had been conveyed to him by one of the defendants, and that he was in actual possession thereof, and that his title thereto had been impeached by the subsequent sale of the same lands by his vendor to the other defendant. The Court of first instance found that the plaintiff's allegation of possession was false, and dismissed the suit. *Held*, on appeal, that the suit was rightly dismissed, for although a plaintiff who brings forward a *bonâ fide* case, which he proves in substance, though not in form, would be assisted by the Court, in the absence of such circumstances no such assistance would be afforded. TERIELPUT SINGH *v.* GOSSAIN SUDERSAN DAS. *McDonnell* and *Broughton*, JJ.....**I. L. Rep. 4 Cal. 46, 1878.**

See also RAM DOOLARY KOOER *v.* THAKOOR ROY.....**I. L. Rep. 4 Cal. 61, p. 63.**

SUIT FOR CONFIRMATION OF POSSESSION AND SETTING ASIDE DEEDS.

See **Setting Aside Deeds.**

TACOORDEEN TEWARRY *v.* NAWAB SYED ALI HOSSEIN KHAN... **L. Rep. 1 I. A. 192.**

SUIT FOR COSTS.

See **Champerty. 2.**

RAM COOMAR *v.* CHUNDER CANTO. **L. Rep. 4 I. A. 23; I. L. Rep. 2 Cal. 233.**

See **Right to Sue. 11. 12.**

See **Limitation. 57.**

HEARN *v.* BAPU NAIKIN.....**I. L. Rep. 1 Bom. 505.**

SUIT ON A DECREE.

1. ——*Procedure in Execution—Right of Decree-holder.*] The appellant having obtained a decree against one Jaidyal, who died leaving the decree unsatisfied, instituted a suit upon the decree against the respondents—alleging that they held the property of Jaidyal, being one-seventh share in a legacy of his father, in their possession — for that portion of the decree against Jaidyal which had not been satisfied, and

SUIT ON A DECREE—*contd.*

prayed that, after a due inquiry, adjustment of accounts, and determination of the value of the said legacy out of the share that might be found due to the judgment-debtor, the amount claimed might be decreed with interest and costs:—

Held, that a judgment does not vest in a judgment-creditor any portion of the property of his judgment-debtor. It gives him a right to have the judgment executed, but until execution the property of the judgment-debtor does not vest in the judgment-creditor simply by virtue of the judgment. The decree, therefore, against Jaidyal did not vest in the plaintiff any right to the property for which he was suing, and he could not maintain the suit.

The proper mode of enforcing a decree is that pointed out by the Code of Civil Procedure (Act VIII. of 1859), *viz.*, by execution and attachment and sale, or by execution and attachment, and the appointment of a receiver under § 243, to collect the property. Where the Legislature has prescribed a particular mode of enforcing a right created by decree, the possessor of that right is bound to follow the procedure prescribed, and no other. MIRZA MAHOMED AGA ALI KHAN BAHADUR *v.* THE WIDOW OF BALMAKUND...**L. Rep. 3 I. A. 241, 1876.**

2. —— *Suit on a Decree of Small Cause Court.*] A suit can be brought in the High Court on a decree of the Small Cause Court. KHOBLALL BABOO *v.* RAMCHUNDER BOSE. *Kennedy* J...**I. L. Rep. 2 Cal. 434, 1877.**

Overruled...*See* **I. L. Rep. 5 Cal. 294, Vol. 2, Col. 1401.**

SUIT ON A DECREE FOR MAINTENANCE.

See **Multiplicity of Suits. 2.**

SIDLINGAPA *v.* SIDAVA.....**I. L. Rep. 2 Bom. 624, 630.**

SUIT EMBRACING TWO OR MORE DISTINCT SUBJECTS—Court Fees on.

See **Court Fees. 7.**

CHAMAILI RANI *v.* RAM DAI...**I. L. Rep. 1 All. 552.**

SUIT TO ENFORCE THE ACCEPTANCE OF A PATTA.

See **Madras Act VIII. of 1865, § 9. 2.**

ZEMINDAR OF DEVARACOTTA *v.* VEMURI VENKAYYA ..**I. L. Rep. 1 Mad. 389.**

Digitized by Google

SUIT TO ENFORCE THE ACCEPTANCE OF A PATTA—*contd.*

—— Tender of *Patta* Necessary.

See **Madras Act VIII. of 1865, § 9. 1.**

SAYAD CHAND *v.* LAKSHMANA... **I. L. Rep. 1 Mad. 45.**

—— A regular suit to enforce the acceptance of a *patta* is maintainable. KARIM *v.* MUHAMMAD KADAR. *Innes* and *Forbes*, JJ...**I. L. Rep. 2 Mad. 89, 1879.**

SUIT ON FOREIGN JUDGMENT.

See **Jurisdiction. 7.**

MATHAPPA CHETTI *v.* CHELLAPPA CHETTI...**I. L. Rep. 1 Mad. 196.**

SUIT IN FORMA PAUPERIS—Court Fees—Prerogative of the Crown.

See **Civil Procedure Code, Act VIII. of 1859, § 309. 1. 2.**

GUNPUT *v.* COLLECTOR OF KANARA...**I. L. Rep. 1 Bom. 7.**

GULZARI LAL *v.* COLLECTOR OF BAREILLY...**I. L. Rep. 1 All. 596.**

—— Court Fees—Prerogative Right of Crown to Execution Sale Proceeds of Defendant's Property.

See **Prerogative of the Crown.**

COLLECTOR OF MORADABAD *v.* MUHAMAD DAIM KHAN.....**I. L. Rep. 2 All. 196.**

—— Petition for Leave to Institute—Subsequent Payment of Court Fees—Limitation.

See **Petition for Leave to Sue in Forma Pauperis. 1. 2.**

SKINNER *v.* ORDE...**I. L. Rep. 1 All. 230; L. Rep. 6 I. A. 126.**

See **Limitation. 37.**

CHUNDER MOHUN *v.* BHUBON MOHINI.....**I. L. Rep. 2 Cal. 389.**

—— *Act VIII. of* 1859, §§ 367, 371—*Continuation* in Formâ Pauperis *of Suit commenced in Ordinary Form.*] The power to allow a suit to be continued as a pauper suit is included in the power given to the Court to allow a suit *in formâ pauperis* to be instituted. NIRMUL CHANDRA MOOKERJEE *v.* DOYAL NATH BHUTTACHARJEE. *Pontifex*, J.....**I. L. Rep. 2 Cal. 130, 1877.**

SUIT BY HINDU WIDOW AS ADMINISTRATRIX OF HUSBAND LEAVING A MINOR SON—A Hindu widow who has obtained letters of administration from the High Court of the estate of her husband, who has left a minor son, is not entitled in such character to maintain a suit with respect to immoveable property left by him. The Court refused to allow such suit to proceed, adding the son as party, or to treat the plaintiff as manager of the infant, but dismissed the suit with costs. KADUMBINEE DOSSEE *v.* KOYLASH KAMINEE DOSSEE. *Kennedy*, J.....**I. L. Rep. 2 Cal. 431, 1877.**

SUIT BY A HINDU WIDOW WITHOUT A CERTIFICATE.

See **Act XXVII. of 1860, § 2.**

TREEPOORASOONDERY DOSSEE *v.* DEBENDRONATH TAGORE...**I. L. Rep. 2 Cal. 45.**

SUIT FOR KABULIAT—By One of Several Co-Sharers of Land.

See **Co-Sharers of Land. 1.**

GUNI MAHOMED *v.* MORAN...**I. L. Rep. 4 Cal. 96.**

1. —— *Enhanced Rate — Presumption of Landlord's Willingness to grant* Pottah.] In order to entitle a landlord to sue a tenant for a *kabuliat* at a certain rent, he should either have tendered to the tenant a *pottah* at the rate of rent mentioned in the *kabuliat*, or he should be willing to grant a *pottah* at that rate, and when he brings a suit against his tenant for a *kabuliat* at a certain rent, it must be presumed that he is ready to grant a *pottah* at that rate. That presumption would enable him to succeed in his suit, if the Court considers that the rent which he claims is the correct amount. But if the Court thinks that he is not entitled to a *kabuliat* at the rate claimed, but at a lower rate, then no presumption can be made in favour of his having been willing to grant a *pottah* at that lower rate. In such a case, therefore, he would not be entitled to a decree for a *kabuliat* at the smaller rate.

Gopeenath Jaunah v. *Jeteo Mollah* (18 W. Rep. 272) dissented from. *Golam Mahomed v. Asmut Ali Khan* (10 W. Rep., F. B., 14) followed. GOGON MANJY *v.* KASHIWARI DEBY. *Garth*, C.J., and *Birch*, J.....**I. L. Rep. 3 Cal. 498, 1877.**

2. —— *False Defence — Over-Estimate of Rent by Plaintiff.*] If a plaintiff brings a suit for a *kabuliat* at an enhanced rent against a

Digitized by Google

SUIT FOR KABULIAT—*contd.*

tenant holding a *mousa* under him at a wholly insufficient rent, and the tenant sets up a wholly false and fraudulent defence, *e.g.*, that the rent he pays is not liable to enhancement, as he holds under a *pottah* which entitles him to hold so long as he pays a certain fixed rent quite irrespective of the value of his holding; and if on inquiry it is found that the defendant's plea is entirely false, and that he is not entitled to hold at any fixed rent, but only on payment of a fair rent with reference to the value of his holding, still if it be found that the plaintiff has at all over-estimated the amount of rent to which he is entitled, his suit must be dismissed. BROJO KISHORE SINGH *v.* BHARRUT SINGH. *Birch* and *Mitter*, JJ.....**I. L. Rep. 4 Cal. 963, 1879.**

SUIT FOR LAND — *Jurisdiction — Letters Patent (Calcutta), 1865, Cl. 12—Injunction.*] In a suit brought against the owners of a mine adjacent to a mine belonging to the plaintiffs, the plaint alleged that a certain boundary line existed between the two mines, and prayed for a declaration that the boundary line was as alleged, and that the defendants might be restrained by injunction from working their mine within a certain distance of such boundary line. The defendants in their written statement disputed the plaintiffs' allegation as to the course of the boundary line, and alleged that their (the defendants') land extended to a second line considerably beyond that specified by the plaintiffs. Both the plaintiffs and defendants had their principal offices, and carried on business, in Calcutta, but the mines were situated out of the jurisdiction of the High Court :—

Held, that the suit was not to enforce an equity against the defendants in regard to the user and enjoyment of their own land. The sole question in dispute between the parties was, whether the margin or strip of land between the two boundary lines belonged to the plaintiffs or defendants. The suit was substantially brought to have it declared as against the defendants, that this strip belonged to the plaintiffs, and was, therefore, a " suit for land " within the meaning of Cl. 12 of the Letters Patent of the Calcutta High Court, and therefore one which, the land being in the Mofussil, the Court had no jurisdiction to try.

On the facts stated in the plaint, and before the filing of the defendants' written statement, the Court had, on the supposition that the object

SUIT FOR LAND—*contd.*

of the suit was to enforce an equity against the defendants in regard to the user and enjoyment of their own land, granted an interim injunction, and refused to take the plaint off the file for want of jurisdiction. THE EAST INDIAN RAILWAY COMPANY *v.* THE BENGAL COAL COMPANY. *Phear*, J.....**I. L. Rep. 1 Cal. 95, 1875.**

2. —— *Jurisdiction — Letters Patent (Calcutta), 1865, Cl. 12 — Deed of Trust giving Trustees Power of Sale of Land in the Mofussil—Suit by Creditor to have Trusts carried out.*] The plaintiffs were, in 1875, creditors of the defendants, *M.* and *L.*, who were joint owners of certain lands in the Mofussil, *M.* being entitled to a fourteen-annas share, and *L.* to a two-annas share therein. *M.*, acting not only for himself, but professing to act for *L.* also, under powers of attorney given to him by *L.*, who had left India, executed in Calcutta a deed conveying the said property to trustees, in trust, to call in such part of the property as consisted of money, and to sell and convert into money all the rest of the property, including the said lands; and out of the moneys so to be realized to pay the creditors of *M.* and *L.* The trustees took on themselves the trusts of the deed, and appointed *M.* their agent to manage the property until the sale under their direction. Difficulties arose in carrying out the trusts, and *L.*, on hearing of the deed, repudiated the transaction altogether, and denied *M.*'s authority to deal with his share of the property under the powers of attorney. On this the trustees were unwilling to proceed further in the execution of the trusts, and were desirous of being discharged from their responsibilities under the trust-deed; whereupon the plaintiffs, as creditors largely interested under the trust-deed, instituted a suit in the High Court of Calcutta on its Original Side, praying that the trusts of the deed might be carried into effect, that the trustees might be relieved from the execution of the trusts, and that a receiver or manager might be appointed to carry out the trusts under the orders of the Court. To this suit the trustees and M. and *L.* were made defendants. *L.* was in England, but *M.* and the trustees were subject to the jurisdiction.

Held, by *Phear*, J., in the Court below, that the High Court as a Court of Equity, with the powers of a Court of Chancery, will, at the instance of a *cestui-que-trust* when necessary, compel an inactive trustee to do his duty, or facilitate a trustee's doing his duty, by making

Digitized by Google

SUIT FOR LAND—*contd.*

declarations of fact or law, which shall bind parties properly brought before it for that purpose, or by acting directly upon parties before it who have control and power over the subject of the trust, and making them perform any obligations with respect to it which they may be under toward the *cestui-que-trust* or trustee.

If, therefore, the substance of the case set up in the plaint was established, it would be accordant with the principles which govern the action of the Court, that it should afford him a remedy for the inactivity and weakness of the trustees by making a declaration as to the validity of the deed of trust, which would be binding on *L.* as a party who had appeared before the Court in the suit, and by appointing a receiver of the rents and profits of the immoveable property, the subject of the trust, and by directing a sale thereof which should be binding on *M.* and *L.*, and would therefore pass a title which they could not dispute; but that the suit being one "for land" within the meaning of Cl. 12 of the Letters Patent (1865), the Court had no jurisdiction to try it.

Held, on appeal, that the object of the suit being to compel the sale of the whole of the land conveyed by the trust-deed, including *L.*'s share, the trustees' title to which was disputed, the suit was in substance a suit for land within the meaning of Cl. 12 of the Letters Patent, and that the Court had no jurisdiction to try it. THE DELHI AND LONDON BANK *v.* WORDIE. *Garth*, C.J., and *Pontifex*, J.....**I. L. Rep. 1 Cal. 249, 1876.**

3. —— *Jurisdiction — Letters Patent (Calcutta)*, 1865, *Cl.* 12— *Application to file Award— Act VIII. of* 1859, § 327 — *Revocation of Authority of Arbitrators.*] The plaintiff and defendant entered into partnership for the purpose of carrying on the cultivation and manufacture of tea, on a tea estate at Darjeeling, of which they were the owners in certain shares. The deed was executed and registered in Calcutta, but both parties resided out of the jurisdiction. The deed contained provisions for a reference to arbitration in case of difference or dispute in any matters relating to the partnership. Differences having arisen, arbitrators were appointed in accordance with the clause in the deed. In the course of the arbitration proceedings one of the arbitrators received two telegrams purporting to be sent by the plaintiff and defendant to the arbitrators, the terms of which were,

SUIT FOR LAND—*contd.*

"Stay further proceedings; arrange matters here." The arbitrators subsequently made their award in Calcutta to the following effect:—that the defendant's share in the partnership property should stand charged with the payment of a certain sum found to be due by him to the plaintiff, and that the defendant should execute a mortgage of his share to the plaintiff as security for such payment; that the partnership should be dissolved on certain terms, and that the tea garden at Darjeeling should be sold in Calcutta. In an application under § 327 of Act VIII. of 1859, to file the award:—

Held, affirming the decision of the Court below, that the High Court at Calcutta had jurisdiction to file the award. Section 327 gives jurisdiction to file an award to any Court in which a suit in respect of the subject-matter of the award might be instituted. A suit in respect of the subject-matter of this award would not be a suit for land, but a suit, in which, by reason of the execution of the deed of partnership in Calcutta, a part of the cause of action arose there; such a suit could, with leave, have been instituted in the High Court; that Court, therefore, had jurisdiction to file the award:—

Held, also, that under the circumstances the telegrams sent to the arbitrators did not amount to a revocation of their authority. KELLIE *v.* FRASER. *Garth*, C.J., and *Macpherson*, J...**I. L. Rep. 2 Cal. 445, 1877.**

SUIT FOR LAND SITUATED IN SONTHAL PARGANAS—Power of High Court to sanction Trial of.

See **Sonthal Parganas.**

KALIPROSAD *v.* MEHER CHANDRO. **I. L. Rep. 4 Cal. 232.**

SUIT FOR MANAGEMENT OF A RELIGIOUS ENDOWMENT—*Advocate-General — Ambiguous Description of Plaintiffs — Jain Sect—Act XX. of* 1863.] The plaintiffs, describing themselves as the persons who constituted the Calcutta Tairo Pantee Anungo Punch Brethren, in whom, as they alleged, was vested the management and control of the temples, endowments, and worship of the Degamberry sect of Jains, and who formed the committee for the management of the Jain charities in Calcutta, and in all other places in India, instituted a suit praying, *inter alia*, for the construction of a will, and to have their rights as

Digitized by Google

SUIT FOR MANGEMENT OF A RELIGIOUS ENDOWMENT—*contd.*

such Punch ascertained and declared, and to have the property dedicated by the will to religious purposes ascertained and secured.

Held, by *Kennedy*, J.—That if there were no other objection to the suit, it would be difficult to maintain it, with so uncertain and ambiguous a description of the character in which the plaintiffs sued, and of the nature and constitution of the body to which they belonged. But the property not being *dewutter*, the plaintiffs therefore were not in the position of *shebaits*; and on the terms of the will the plaintiffs could not claim property in the subject-matter of the suit, but only a right of management, and a mere manager, without some special power, could not institute a suit for property. The Hindu law does confer such power in the case of a *shebait*, but here the property, not being *dewutter*, was not vested in any one, and the only claim was to have a right of management, which the plaintiffs did not allege to be vested in them under the provisions of Act XX. of 1863, and therefore that they could not maintain the present suit.

Held also, that the plaintiffs, not having been incorporated, could not sue in a corporate character; but that Act XX. of 1863 applies to religious endowments in the Presidency towns, and to persons who are *de facto* trustees, &c., and if there were any religious endowments created by the will, the defendants (if any liability attached on them) might be sued as trustees under Act XX. of 1863, § 14, on the necessary preliminary leave under § 18 being obtained, or, if the gifts could be treated not as religious but charitable gifts, possibly the Advocate-General could sue.

Held, on appeal, that the right in which the plaintiff sued was sufficiently shown; that the object of the suit was not to assert personal rights of ownership in the plaintiffs, but to have the trusts of the will, in which they were interested (not beneficially but as the representatives of their sect), ascertained, and the performance of those trusts secured. Nor did the practice of the Court require that the Advocate-General should be a party to such a suit.

Held also, that Act XX. of 1863 did not apply to such a suit. Section 14 of that Act, though general in its terms, does not interfere with the procedure of the Supreme Court in reference to trusts concerning property, which could not, under any circumstances, come under the direct

SUIT FOR MANGEMENT OF A RELIGIOUS ENDOWMENT—*contd.*

control of Government. Such a suit is not brought under Act XX. of 1863, but under the Ordinary Original Jurisdiction of the High Court, inherited from the Supreme Court, and conferred upon the Supreme Court by its Charter—a jurisdiction similar in its general features to that of the Lord Chancellor in England.

Ganes Sing v. *Ramgopal Sing* (5 Beng. L. Rep., Appx. 55) dissented from. PANCHCOWRIE MULL *v.* CHUMROOLALL. *Garth*, C.J., and *Markby*, J...
I. L. Rep. 3 Cal. 563; 2 Cal. Rep. 121, 1871.

SUIT AGAINST MUNICIPALITY—Substitution of President for Secretary as Defendant—Limitation.

See **Act XV. of 1873, § 43.**

MANNI KASAUNDHAN *v.* CROOKE.
I. L. Rep. 2 All. 296.

—— *Bombay Act VI. of* 1873, § 7—*Act X. of* 1876, § 15—*Jurisdiction.*] In a suit by or against a Municipality, every individual Commissioner must be regarded as a party within the meaning of § 15, Act X. of 1876; and, consequently, such a suit cannot be entertained by a Subordinate Judge or Court of Small Causes, but can be entertained by the District Judge alone, inasmuch as by § 7 of Bombay Act VI. of 1873, such Municipalities consist of a number of Commissioners therein mentioned, some of whom are officers of Government, and declared to be Commissioners *ex officio*. THE AHMEDABAD MUNICIPALITY *v.* MAHAMAD JAMAL. *Melvill* and *Kemball*, JJ...**I. L. Rep. 3 Bom. 146, 1878.**

SUIT FOR POSSESSION—Decree—Application for Assessment of Mesne Profits—Limitation.

See **Civil Procedure Code, Act VIII. of 1859, § 197.**

DILDAR HOSSEIN *v.* MUJEEDUNNISSA.....**I. L. Rep. 4 Cal. 629.**

—— By Lessee, claiming under Lease by a Lessor out of Possession at Date of Lease.

See **Landlord and Tenant. 8.**

LOKENATH GHOSE *v.* JUGOBUNDHOO ROY.....**I. L. Rep. 1 Cal. 297.**

—— Limitation—Fraud.

See **Limitation. 59.**

CHUNDER NATH *v.* TIRTHANAND.
I. L. Rep. 3 Cal. 504.

Digitized by Google

SUIT FOR PROFITS—Power of Revenue Courts in to award Interest.

See **Act XVIII. of 1873, § 93, Cl. h.**

TOTA RAM *v.* SHER SINGH ...**I. L. Rep. 1 All. 261.**

—— *Act XVIII. of* 1873, §§ 7 *and* 14—*Ex-Proprietary Tenant*—Sir *Land.*] A mahal, of which the plaintiff claimed a one-third share of the profits for a certain year, belonged in equal shares to the defendant, the lambardar, and *S.* and *R.*, his brothers, who held certain *sir* lands in partnership. The plaintiff had acquired the share of *S.* at an auction sale, *S.* thus becoming an ex-proprietary tenant. The *sir* land was not included in the rent-roll of the mahal, but was admitted by the defendant to be assessable with rent at a certain rate per *bigha*. The lower Appellate Court ruled that the plaintiff was not entitled to claim a share of the profits from the *sir* land because it had not been assessed with rent under Act XVIII. of 1873, § 14:—

Held, that whatever might be the proper course to be taken for the purpose of assessing the *sir* land, or *S.*'s share of it, with rent, the plaintiff was not debarred from claiming and obtaining his fair share in the profits of the *sir* holding because such course had not been taken. MUHAMMAD ALI *v.* KALIAŃ SINGH. *Stuart*, C.J., and *Pearson*, J ...**I. L. Rep. 1 All. 659, 1878.**

SUIT FOR REDUCTION OF MAINTENANCE OF WIDOW AWARDED BY DECREE.

See **Hindu Law—Maintenance of Widow. 10.**

RUKA BAI *v.* GAUDA BAI...**I. L. Rep. 1 All. 594.**

See **Multiplicity of Suits. 2.**

SIDLINGAPA *v.* SIDAVA.....**I. L. Rep. 2 Bom. 624, 630.**

SUIT BY REVERSIONER—For Declaratory Decree.

See **Declaratory Decree. 7.**

JAGESRI KUAR *v.* RAM NATH...**I. L. Rep. 1 All. 371.**

—— Hindu Widow—to set aside Adoption by Daughter-in-law.

See **Right to Sue. 8.**

JUMOONA DASSYA *v.* BAMASOONDERAI DASSYA ... **L. Rep. 3 I. A. 72; I. L. Rep. 1 Cal. 289.**

SUIT BY REVERSIONER—*contd.*

—— During Lifetime of Widow in Possession to restrain Waste, and for Declaration of Title.

See **Declaratory Decree. 2.**

KATHAMA NATCHIAR *v.* DORASINGA TEVER...**L. Rep. 2 I. A. 169; 15 Beng. L. Rep. 83.**

—— *Hindu Law—Alienation—Fraud.*] *S.* was entitled, under the Mitakshara law, to succeed on the death of *M.*, her mother, to the real estate of *N.*, her father. Certain persons disputed *S.*'s right of succession, and claimed that they were entitled to succeed to *N.*'s estate on *M.*'s death, and complained that *M.* was wasting the estate. The differences between these persons and *M.* and *N.* were referred by them to arbitration, and an award was made and filed in Court, which, among other things, partitioned the estate between *S.* and such persons. *G.*, who claimed the right to succeed to the estate on *S.*'s death, sued for the cancellation of the award, on the ground that it was fraudulent, and affected his reversionary interests:—

Held, following *Dowar* v. *Boonda* (I. L. Rep. 1 All. 274), that the suit was maintainable, though *G.* was not the next reversioner. GAURI DAT *v.* GUR SAHAI. *Stuart*, C.J., and *Pearson*, J ..**I. L. Rep. 2 All. 41, 1878.**

SUIT BY A REVERSIONER TO SET ASIDE ALIENATION BY A HINDU WIDOW—TERMS.

See **Hindu Law—Will. 5.**

MAHOMED SHUMSOOL *v.* SHAVUKRAM.....**L. Rep. 2. I. A. 7.**

SUIT BY VILLAGE PRIEST AGAINST HIS YAJMAN.

See **Right to Sue. 13.**

SUIT TO VINDICATE RIGHT TO A MERE DIGNITY — Adava Palki.] The plaintiff, alleging that the privilege of *Adava Palki, i.e.*, of being carried on ceremonial occasions in a palanquin borne cross-ways, belonged exclusively to him, as heir or successor of the Swamis of Sringiri, in virtue of a grant from the ruling power to a predecessor in office, and, asserting that the defendant had infringed his right by the assumption of the right in question, prayed for an injunction to restrain the defendant for the future from being carried in a palanquin cross-ways—

Digitized by Google

SUIT TO VINDICATE RIGHT TO A MERE DIGNITY—*contd.*

Held, on a remand from the Privy Couucil, that, assuming the case stated by the plaintiff to be true, the suit was not maintainable. SRI SANKAR BHARTI *v.* SIDHA LINGAYA CHARANTAI ..**I. L. Rep. 2. Bom. 473.**

In SHANKARA MARABASAPA *v.* HANNIA BHIMA. **I. L. Rep. 2 Bom. 470.**

where the plaintiff sued to establish his right to perform the duties of *Chalwadi*, or bearer on public occasions of the insignia or symbols of the Lingayet caste at Bagalkot, in the district of Belgaum, it appeared that though members of the caste might bestow voluntarily gratuities on the *Chalwadi*, there were no fees, as of right, appurtenant to the office. *Westropp*, C.J., said:—"It is therefore clear that an action by the plaintiff against an intruder upon his office, who had been paid such gratuities, if the action be brought merely for monies received by the defendant to the use of the plaintiff, would not lie. Whether, under such circumstances, a plaintiff might recover nominal damages from a defendant in a suit in the nature of an action on the case, and also obtain, under the equitable jurisdiction of our Courts, substantial relief by getting an injunction restraining the defendant from further intruding, is a question of some nicety. It might perhaps be contended that an office, unaccompanied by emoluments, fees, or salary, payable as of right, is a mere dignity, and therefore falls within the scope of *Sri Sunkur Bharthi Swami* v. *Sidha Lingaya Charantai* (3 Moo. I. A. 198)." His Lordship, after stating the circumstances of the remand of that case by the Privy Council, and the decision of the Sudder Court on remand, then proceeded:—"Whether the office of *Chalwadi* of Bagalkot, dissociated as it has been found to be from any emoluments receivable as of right, is a mere dignity, like the honour claimed by the Swami, and, therefore, not a fit subject for an action against an intruder for his disturbance of the party entitled, is a question on which we do not purpose to give an opinion."

See this Case under **Disturbance of Office.**

SUIT BY WIFE AGAINST HUSBAND.

See **Husband and Wife.**

HARRIS *v.* HARRIS...**I. L. Rep. 1 Cal. 285.**

SULEHNAMAH, REGISTRATION OF.

See **Registration. 5.**

SURJU PRASAD *v.* BHAWANI SAHAI. **I. L. Rep. 2 All. 481.**

SUMMARY JURISDICTION.

See **Criminal Procedure Code, Act X. of 1872, § 56.**

PURSOORAM BOROOAH...**I. L. Rep. 2 Cal. 117.**

SUMMARY ORDER—Act VIII. of 1859, § 246—Order rejecting Claim to Property ordered to be sold—Suit to establish Title—Limitation.

See **Limitation. 52.**

KOYLASH CHUNDER *v.* PREONATH. **I. L. Rep. 4 Cal. 610.**

SUMMARY PROCEDURE—*Unlawful Assembly armed with Deadly Weapons—Penal Code*, §§ 143, 144, *Jurisdiction—Appeal.*] No Magistrate is entitled to split up an offence into its component parts for the purpose of giving himself summary jurisdiction. If a charge of an offence not triable summarily is laid and sworn to, the Magistrate must proceed with the case accordingly, unless he is in a position at the outset to show from the deposition of the complainant that the circumstances of aggravation are really mere exaggeration, and are not to be believed.

Therefore a Magistrate, when he has before him a person charged with having been a member of an unlawful assembly, armed with a deadly weapon, is not at liberty to disregard that part of the charge which charges the prisoner with having been armed with a deadly weapon, and so to give himself jurisdiction to try the case summarily, and then, by inflicting a sentence of imprisonment not exceeding three months, to deprive the prisoner of his appeal.

Proceedings of a Deputy Magistrate who had adopted this course, quashed, as void, and a trial *de novo* ordered. EMPRESS *v.* ABDOOL KARIM. *Ainslie* and *Broughton*, JJ...**I. L. Rep. 4 Cal. 18, 1878.**

SUMMARY SETTLEMENT WITH ONE MEMBER OF AN UNDIVIDED HINDU FAMILY.

See **Oudh Proclamation of 1858, para. 8. 1.**

HURPURSHAD *v.* SHEO DYAL...**L. Rep. 3 I. A. 259.**

Digitized by Google

SUMMARY SETTLEMENT WITH TALUKDAR DYING BEFORE THE LETTER OF THE 10th OCTOBER 1859 — Resumption of Taluk—Right of Talukdar's Heirs.

See **Act I. of 1869, 3.**

RANEE OF CHILLAREE *v.* THE GOVERNMENT OF INDIA...**L. Rep. 4 I. A. 208.**

SUMMARY SUIT ON PROMISSORY NOTE—Extending Time for Defendant to obtain Leave to appear and defend.

See **Civil Procedure Code, Act X. of 1877, § 532.**

GROOM *v.* WILSON...**I. L. Rep. 3 Cal. 539.**

SUMMARY TRIAL—*Act X. of* 1872, §§ 228 283—*Record in Appealable Case—Substance of Evidence.*] *K.* was tried in a summary way for the offence of receiving stolen property, and convicted. On appeal, the Sessions Judge set aside the conviction, on the ground that the Magistrate had failed to comply with the provisions of § 228 of Act X. of 1872, and record a judgment embodying the substance of the evidence on which the conviction was based :—

Held, that although it was important that the evidence should be so set forth in the judgment as to enable the Appellate Court to perform its functions in appeal, and though the prisoner's right of appeal must not be defeated in consequence of an imperfect statement of the substance of the evidence, yet, on the other hand, it was unnecessary to cancel a conviction and sentence not otherwise apparently exceptionable by reason of such a defect.

If the Sessions Judge found it impossible to dispose of the prisoner's appeal, because the substance of the evidence for the prosecution was not sufficiently embodied in the judgment of the Magistrate, it would have been better to have required that officer to repair the defect in his judgment by recording a judgment in which the substance of the evidence should be fully embodied, and, if necessary, re-examining the witnesses for that purpose, or to have ordered a re-trial with that view. EMPRESS *v* KARAN SINGH. *Pearson* and *Oldfield*, JJ...**I. L. Rep. 1 All. 680, 1878.**

SUMMONS—Amendment of.

See **Small Cause Court—Presidency Town. 2.**

MOWLA *v.* BALA...**I. L. Rep. 2 Bom. 91.**

SUMMONS CASES—Offence under Act XX. of 1856, § 49.

See **Criminal Procedure Code, Act X. of 1872, § 222.**

EMPRESS *v.* BAIDANATH SINGH...**I. L. Rep. 3 Cal. 866.**

SUMMONS TO DEFENDANT TO APPEAR AND ANSWER — Fresh Summons on Failure to serve.

See **Practice—Civil. 4.**

RAMKISSEN DOSS *v.* LUCKEY NARAIN.....**I. L. Rep. 3 Cal. 312.**

SUPERINTENDENCE OF HIGH COURT—Over District Courts mentioned in Registration Act VIII. of 1871.

See **Review. 8.**

REASUT HOSSEIN *v.* HADJEE ABDOOLAH.....**L. Rep. 3 I. A. 221.**

—— Error of Law or Fact by Lower Court acting within its Jurisdiction no Ground for Exercise of Powers of.

See **Stat. 24 and 25 Vict., C. 104, § 15. 3. 6.**

TEJ RAM *v.* HARSUKH...**I. L. Rep. 1 All. 101.**

MADHUB CHUNDER *v.* SHAM CHAND. **I. L. Rep. 3 Cal. 243.**

—— Failure by Lower Court to perform, or Entire Misconception of Duty, and Absence of Remedy by Appeal, is Ground for Exercise of Powers of.

See **Stat. 24 and 25 Vict., C. 104, § 15. 4. 6.**

MATHRA PARSHAD ... **I. L. Rep. 1 All. 296.**

MADHUB CHUNDER *v.* SHAM CHAND. **I. L. Rep. 3 Cal. 243.**

—— Order by Magistrate under § 518, Act X. of 1872, not interfered with.

See **Stat. 24 and 25 Vict., C. 104, § 15. 5.**

CHUNDER NATH SEN...**I. L. Rep. 2 Cal. 293.**

—— Placing Party on Record, not the Representative of Deceased Party to Suit, is Ground for Exercise of Powers of.

See **Stat. 24 and 25 Vict., C. 104, § 15. 7.**

POGOSE *v.* CATCHICK ..**I. L. Rep. 3 Cal. 708.**

Digitized by Google

SUPERINTENDENCE OF HIGH COURT—*contd.*

—— Power of—will not be exercised where all other Legal Remedies not Exhausted.

See **Stat. 24 and 25 Vict., C. 104, § 15. 8.**

EMPRESS *v.* RAJCOOMAR SINGH...**I. L. Rep. 3 Cal. 573, 577.**

—— Suit Cognizable by Small Cause Court—no Question of Jurisdiction being involved.

See **Stat. 24 and 25 Vict., C. 104, § 15. 1.**

LUKHYKANT BOSE.....**I. L. Rep. 1 Cal. 180.**

SUPERIOR TENURE, SETTING ASIDE SALE OF—Effect of.

See **Setting aside Sale of Superior Tenure, Effect of.**

SREENARAIN BAGCHEE *v.* SMITH... **I. L. Rep. 4 Cal. 807.**

SUPERSESSION OF DECREE.

See **Money paid under Decree subsequently Superseded.**

JOGESH CHUNDER *v.* KALI CHURN. **I. L. Rep. 3 Cal. 80.**

SUPREME COURT OF BOMBAY—COMMON LAW—RULES OF—Application by Attorney under Rule 149.

See **Attorney and Client. 1.**

ABA ISHMAIL *v.* ABA THARA... **I. L. Rep. 1 Bom. 253.**

SUPREME COURT RULES (BOMBAY, EQUITY) 371 AND 456—Certificate of Commissioner for taking Accounts.

See **Accounts. 3.**

RUSTOMJI BURJORJI *v.* KESSOWJI NAIK...**I. L. Rep. 3 Bom. 161.**

SURBARAKAR.

See **Manager.**

See **Act XI. of 1859, § 5.**

BUNVAREE LALL *v.* MOHABEER PROSHAD...**L. Rep. I. A. 89.**

SURETY—For Costs — Executing Security Bond before Decree—Proceedings against—in Execution.

See **Security Bond.**

CHUTTERDHAREE *v.* RAMBELASHEE...**I. L. Rep. 3 Cal. 318.**

SURETY—*contd.*

—— Dischage of.

See **Principal and Surety. 4.**

POGOSE *v.* BANK OF BENGAL...**I L. Rep. 3 Cal. 174.**

—— Discharge of—Giving Time—Acceptance of Interest in Advance.

See **Principal and Surety. 2.**

PROTAB CHUNDER *v.* GOUR CHUNDER...**I. L. Rep. 4 Cal. 132.**

—— Execution against— Giving Time to Principal—Interest.

See **Principal and Surety. 3.**

RAMANUND *v.* CHOWDHRY SOONDER NARAIN...**I. L. Rep. 4. Cal. 331.**

—— Stay of Execution pending Appeal—Sureties—Extent of Liability of.

See **Civil Procedure Code, Act VIII. of 1859, § 338.**

SHIVLAL *v.* APAJI...**I. L. Rep. 2 Bom. 654.**

SURETIES—*For Execution of Decree—Extent and Duration of their Liability—Act VIII. of* 1859, § 338.] The appellants became sureties, under § 338, Act VIII. of 1859, that the judgment debtor would "obey and fulfil all such orders and decrees as should be given against him in appeal," and in default of his doing so, they bound themselves "to pay jointly and severally, at the order of the Court, all such sums as the Court should, to the extent of Rs. 812-8-0, adjudge."

Held, by a Full Bench, that the obligation of the sureties was not confined to the first decree of the Appellate Court, but extended to the final decree which it passed, upon the case being remanded by the High Court in special appeal. APPAJI BHIVRAV *v.* SHIVLAL KHUBCHAND...**I. L. Rep. 3 Bom. 204, 1879, F. B.** S. C. under **Letters Patent, Bombay (1865), Cl. 36.**

"SURPLUS."

See **Will. 7.**

DWARKANATH *v.* BURRODA PERSANO...**I. L. Rep. 4 Cal. 443.**

SURPLUS SALE-PROCEEDS—Rights of Attaching Creditors.

See **Sale in Execution of Decree. 14.**

MANIK SINGH *v.* PARAS RAM...**I. L. Rep. 1 All. 727.**

Digitized by Google

SURVIVORSHIP—Among Co-Widows.

See **Hindu Law — Inheritance — Widow. 2.**

SRI GAJAPATHI NILAMANI *v.* SRI GAJAPATHI RADHAMANI...**L. Rep. 4 I. A. 212; I. L. Rep. 2 Mad. 290.**

—— Daughter's Succession by—not Defeated by becoming a Childless Widow.

See **Hindu Law — Inheritance — Daughters. 2.**

AUMIRTOLALL BOSE *v.* RAJONEEKANT MITTER..... **L. Rep. 2 I. A. 113.**

—— Grant of Village to Two Hindu Brothers.

See **Hindu Law—Undivded Family. 1.**

RADHABAI *v.* NANARAV.....**I. L. Rep. 3 Bom. 151.**

—— Joint *Mutuwalli.*

See **Mahomedan Law—Wakf.**

PHATE SAHEB *v.* DAMODAR...**I. L. Rep. 3 Bom. 84.**

SUSPENSION OF PLEADER — Special Leave to appeal against Order of.

See **Practice—Privy Council. 5.**

In the matter of QUARRY.....**I. L. Rep. 2 All. 511.**

TABUTS—Suit to establish Right to carry along Public Road.

See **Right to Sue. 1.**

SAKTU *v.* IBRAHIM...**I. L. Rep. 2 Bom. 457.**

TALABDA KOLI CASTE — Adoption among.

See **Hindu Law—Adoption. 16.**

BHALA *v.* PARBHU...**I. L. Rep. 2 Bom. 67.**

TALAK—Pronunciation of the Word—by Husband not addressed to any Person, not Divorce.

See **Mahomedan Law—Divorce. 2.**

FURZUND HOSSEIN *v.* JANU BIBEE. **I. L. Rep. 4 Cal. 588.**

TALOOKDAR—Registered—may be Trustee —Right of Alienation of—Act I. of 1869.

See **Act I. of 1869. 2. 5. 6. 7.**

See **Oudh Proclamation of 1858, para. 8. 1.**

HURPURSHAD *v.* SHEO DYAL...**L. Rep. 3 I. A. 259.**

TALOOKDARI SUNNUD—Grant of— and Summary Settlement with Member of Undivided Hindu Family.

See **Oudh Proclamation of 1858, para. 8. 1.**

HURPURSHAD *v.* SHEO DYAL...**L. Rep. 3 I. A. 259.**

TANKS — ZEMINDAR'S LIABILITY FOR DAMAGE CAUSED BY—*Negligence —Extraordinary Flood.*] Where it is the duty of the zemindar to maintain the tanks, on his zemindary, which are a part of the national system of irrigation, recognized by the laws of India as essential to the welfare of the inhabitants, and the banks of a tank are washed away by an extraordinary flood without negligence on his part:—

Held, that the zemindar is not liable for any damages that may be occasioned by the overflow of the water. *Fletcher* v. *Rylands* (L. Rep. 3 H. L. 330) distinguished. THE MADRAS RAILWAY CO. *v.* THE ZEMINDAR OF CARVATENAGARUM.....**L. Rep. 1 I. A. 364; 14 Beng. L. R. 209; W. R. 22, 279, 1874.**

TARWAD PROPERTY — Right of *Karnavan* to revoke *Anandravan's* Authority to manage.

See **Malabar Law. 3.**

GOVINDAN *v.* KANNARAN...**I. L. Rep. 1 Mad. 351.**

TAX—Construction of Act imposing.

See **Madras Act III. of 1871.**

LEMAN *v.* DAMODARAYA...**I. L. Rep. 1 Mad. 158.**

—— Illegally Levied — Suit to recover Money Paid under.

See **Madras Act III. of 1871.**

LEMAN *v.* DAMODARAYA.....**I. L. Rep. 1 Mad. 158.**

TAXATION OF BILL OF COSTS — Client's Right to—after refusing Offer to Tax, and Delay for Seven Years.

See **Attorney and Client. 3.**

MONOHUR DOSS *v.* ROMONAUTH LAW.....**I. L. Rep. 3 Cal. 473.**

Digitized by Google

TENANCY — Determination of — Non-Payment of Rent.

See **Limitation. 21.**

POREsh NARAIN ROY *v.* KASSI CHUNDER TALUKDAR...**I. L. Rep. 4 Cal. 661.**

See **Landlord and Tenant. 5, 9.**

TENANCY AT WILL.

See **Landlord and Tenant. 2.**

PROSUNNO COOMAREE *v.* SHEIKH RUTTON.....**I. L. Rep. 3 Cal. 696.**

TENANCY FROM YEAR TO YEAR.

See **Landlord and Tenant. 2.**

PROSUNNO COOMAREE *v.* SHEIKH RUTTON...**I. L. Rep. 3 Cal. 696.**

TENANT.

See **Madras Act VIII. of 1865, § 1.**

ZINULABDIN *v.* VIJIEN VIRAPATREN...**I. L. Rep. 1 Mad. 49.**

—— Ex-Proprietary.

See **Act XVIII. of 1873, § 9.**

BHAGWANTI *v.* RUDR MAN TIWARI. **I. L. Rep. 2 All. 145.**

—— Liability of—for Rent due by Former Tenant.

See **Landlord and Tenant. 6.**

RASH BEHARY *v.* PEARY MOHUN... **I. L. Rep. 4 Cal. 346.**

—— Occupancy.

See **Act XVIII. of 1873, § 9.**

BHAGWANTI *v.* RUDR MAN TIWARI. **I. L. Rep. 2 All. 145.**

TENANT AT FIXED RATES.

See **Act XVIII. of 1873, § 9.**

BHAGWANTI *v.* RUDR MAN TIWARI. **I. L. Rep. 2 All. 145.**

TENANT AT WILL—Erection of Buildings by—on Land Demised.

See **Landlord and Tenant. 2.**

PROSUNNO COOMAREE *v.* SHEIKH RUTTON...**I. L. Rep. 3 Cal. 696.**

TENANT FROM YEAR TO YEAR.

See **Rights of Mirasdars.**

FAKIR MUHAMMAD *v.* TIRUMALA CHARIAR...**I. L. Rep. 1 Mad. 205.**

—— Erection of Buildings by — on Lands Demised.

See **Landlord and Tenant. 2.**

PROSUNNO COOMAREE *v.* SHEIKH RUTTON...**I. L. Rep. 3 Cal. 696.**

—— Reasonable Notice to Quit—Act X. of 1872, § 530.

See **Ejectment. 1.**

RAM ROTTON *v.* KETRO KALLY... **I. L. Rep. 4. Cal. 339.**

See **Landlord and Tenant. 1.**

RAJENDRONATH *v.* PASSIDER...**I. L. Rep. 2 Cal. 146.**

TENDER—Of *Patta*, Necessary to Suit to compel Acceptance of *Patta*.

See **Madras Act VIII. of 1865, § 9. 1.**

SAYUD CHAND *v.* LAKSHMANA...**I. L. Rep. 1 Mad. 45.**

1. —— *Cheque in Payment of Debt—Costs.*] The landlord of a house through his agent presented rent-bills to his lessee. The lessee gave the agent a cheque in favour of her attorney for the amount demanded, and obtained a receipt from him. The agent took the cheque to the lessee's attorney, who cashed it and handed the amount to the agent, who tendered it to the landlord's attorney, who refused to accept it and the amount was thereupon returned to the lessee's attorney.

In a suit for the rent (the defendant not having paid the amount into Court) :—

Held, that although a person who is employed to receive money is not bound to receive a cheque, and that, therefore, if the landlord's agent had brought back the cheque to the landlord, the latter would have been justified in refusing to receive it, yet that, the agent having taken the cheque and obtained the money, the tender was made under circumstances amounting to payment.

Held also, that although as a general rule the amount of a tender not accepted ought to be paid into Court in order to entitle the defendant

Digitized by Google

TENDER—*contd.*

to costs, yet that, as the tender in this case amounted to payment, the defendant was entitled to have the suit dismissed with costs. BOYLE CHUND SINGH *v.* MAULARD. *Wilson*, J. **I. L. Rep. 4 Cal. 572, 1878.**

S. C. under **Amendment of Issues at the Hearing.**

2. —— *Costs—Difference between a Tender on account of Separable Claims and one made in Reference to Part of a Single Inseparable Claim—Unconditional Tender, what is.*] In a suit to recover Rs. 1,323-15-6, the balance of the price of goods sold, on which an account had been come to between the parties, it appeared that the defendant had, before suit, tendered a sum of Rs. 1,043-5-0, stating in the letter of tender that the sum so tendered was the only sum due. At the trial the plaintiff obtained a decree for the full amount claimed by him :—

Held, by *Kennedy*, J.—That the tender was a tender of part of an entire debt, and therefore bad, and that the plaintiff was entitled to his costs.

Held, on appeal, confirming the decision of the Court below, that the tender was made in such a way, that the plaintiff could not accept the sum tendered without giving up the remainder of his claim. An offer of that kind to pay a portion of the debt in discharge of the whole debt is not a legal tender of the part only. If the money had been tendered unconditionally, it might have been otherwise. CHUNDER CAUNT MOOKERJEE *v.* JODOONATH KHAN. *Garth*, C. J., and *Markby*, J. **I. L. Rep. 3 Cal. 468 ; 1 Cal. Rep. 470, 1878.**

TENDER OF STAMP DUTY AND PENALTY.

See **Stamp. 7.**

CHAMPABATY *v.* BIBI JIBUN...**I. L. Rep. 4 Cal. 213.**

TENURE—Liability of—for Rent due by Former Tenant.

See **Landlord and Tenant. 6.**

RASH BEHARY *v.* PEARY MOHUN... **I. L. Rep. 4 Cal. 346.**

TERRITORIAL JURISDICTION OF BRITISH COURT CEASES ON VALID CESSION.

See **Cession of Territory. 2.**

DAMODHAR *v.* GANESH...**10 Bom. H. C. Rep. 37 ; I. L. Rep. 1 Bom. 367 ; L. Rep. 1 App. Ca. 332.**

TERRITORIAL JURISDICTION OVER HIGH SEAS ADJACENT TO THE COAST.

See **Jurisdiction. 10.**

BABAN *v.* NAGU...**I. L. Rep. 2 Bom. 19.**

THEFT—Of Government Currency Note—Title of Original Owner.

See **Government Currency Note.**

EMPRESS *v.* JOGESSUR MOCHI ..**I. L. Rep. 3 Cal. 379.**

—— Removal of Property with Criminal Intent, but with Owner's Consent.

See **Abetment. 3.**

EMPRESS *v.* TROYLUKHO NATH .. **I. L. Rep. 4 Cal. 366.**

—— *Penal Code*, § 378.] Possession of wood by a Forest Inspector, who is a servant of Government, is possession of the Government itself ; and a dishonest removal of it without payment of the necessary fees, from his possession, though with his actual consent, constitutes theft within the meaning of § 378 of the Penal Code, where that consent was unauthorized or fraudulent. REG. *v.* HANMANTA. *Melvill* and *Kemball*, JJ... **I. L. Rep. 1 Bom. 610, 1877.**

THREATENING TO BRING FALSE CHARGE—Conviction of Criminal Intimidation by—Security to keep Peace.

See **Criminal Procedure Code, Act X. of 1772, § 489.**

EMPRESS *v.* RAGHUBAR.....**I. L. Rep. 2 All. 351.**

TICKET—Right of Passenger by Railway to demand a—at Intermediate Stations.

See **Railway Company. 4.**

PRATAB DAJI *v.* THE B. B. & C. I. RY. CO...**I. L. Rep. 1 Bom. 52.**

—— Travelling in Railway Carriage without a.

See **Railway Company. 4.**

PRATAB DAJI *v.* THE B. B. & C. I. RY. CO...**I. L. Rep. 1 Bom. 52.**

TIME-BARRED APPEAL—Admission of.

See **Oudh Talukdars' Relief Act XXIV. of 1870, § 10.**

RAMJISDAS *v.* RAJAH BHAGWAN BAX...**L. Rep. 5 I. A. 197.**

1. —— *Admission of—by Single Judge ex-parte—Act IX. of 1871, §§ 4 and 5.*] *Held*, by the Full Bench, that the order admitting an appeal

Digitized by Google

TIME-BARRED APPEAL—*contd.*

after time, made *ex-parte* by a single Judge of the High Court sitting to receive applications for the admission of appeals, under a rule of Court made in pursuance of Stat. 24 and 25 Vict., C. 104, § 13, and the Letters Patent of the High Court at Allahabad, § 27, is liable to be impugned and set aside at the hearing of the appeal by the Bench before whom it is brought on for hearing on the ground that the reasons assigned for admitting it are erroneous or inadequate.

Per Pearson, J.—A distinction must be made between an order admitting an appeal after time, after the other party to the case has had an opportunity of urging any objections he may have to make to its admission, and an order admitting an appeal after time merely on the strength of the explanation given or the evidence adduced by the appellant himself of the cause of his delay in preparing the appeal.

An order of the first kind made by a single Judge cannot be impugned or set aside at the hearing of the appeal by the Bench before whom it comes to be heard. For although, under the rule of practice of the High Court, an appeal may be admitted by a single Judge, and afterwards be heard by a Bench of which that Judge may or may not be a member, the Court which admits the appeal is not one Court, and the Court which hears the appeal another distinct Court, but both Courts are one and the same High Court; and the Bench cannot be held to have any power to review or interfere with the single Judge's decision between the parties on the point, whether sufficient cause was shown by the appellant for not presenting the appeal within the prescribed time. DUBEY SAHAI *v.* GANESH LAL.....**I. L. Rep. 1 All. 34, 1875.**

2. —— *Admission of — Sufficient Cause.*] A suit was dismissed by the Court of first instance on the 26th of July 1875. The plaintiff applied on that day for a copy of the decree, which was furnished on the 31st of July. On the 31st of August, one day after the time allowed by law, she presented an appeal to the lower Appellate Court, but assigned no reason in her petition for her delay, but alleged verbally that she had miscalculated the period within which she was bound to appeal. The lower Appellate Court simply recorded that it should excuse the delay, and admitted the appeal:—

TIME-BARRED APPEAL—*contd.*

Held, that an error in the calculation of the time allowed for appealing, was not, under the circumstances, a sufficient cause for the delay, so as to justify the admission of the appeal. ZAIBULNISSA BIBI *v.* KULSUM BIBI. *Turner* and *Oldfield*, JJ.....**I. L. Rep. 1 All. 250, 1876.**

TIME-BARRED DEBT — Alienation by Hindu Widow of Husband's Estate to pay.

See **Hindu Law — Alienation by Widow. 5.**

BHALA *v.* PARBHU...**I. L. Rep. 2 Bom. 67, 71.**

—— Good Consideration for Bond.

See **Limitation. 42.**

RAGOJI *v.* ABDUL...**I. L. Rep. 1 Bom. 590.**

—— Good Consideration for Promissory Note.

See **Limitation. 42. 43. 44.**

CHATUR *v.* TULSI...**I. L. Rep. 2 Bom. 230.**

KALLY PROSONNO *v.* HEERA LALL. **I. L. Rep. 2 Cal. 468.**

MUNGOL PRASHAD *v.* SHAMA KANTO...**I. L. Rep. 4 Cal 708.**

—— Liability of Share of Next of Kin for— Due to Estate of Intestate.

See **Administration. 2.**

DHANJIBHAI *v.* NAVAZBAI...**I. L. Rep. 2 Bom. 75.**

—— Revival of.

See **Acknowledgment of Debt.**

MATHURA DAS *v.* BABU LAL... **I. L. Rep. 1 All. 683.**

See **Hindu Law—Maintenance of Widow. 6.**

KRISHNA M. BOSE *v.* OKHILOMINEE. **I. L. Rep. 3 Cal. 331.**

See **Limitation. 15. 16. 17. 45. 46. 47.**

—— *Payment of—by Administrator General.*] The Administrator General holds, administers, and is accountable for the estate under his charge, not merely as an officer of the Court, but as an ordinary executor or administrator. And as an executor or administrator may pay a time-barred debt, so the Administrator General may pay such a debt, and is entitled to be allowed such pay-

Digitized by Google

TIME-BARRED DEBT—*contd.*

ments in his account. ADMINISTRATOR GENERAL *v.* HAWKINS. *Morgan*, C.J., and *Innes*, J. ... **I. L. Rep. 1. Mad. 267, 1877.**

See DHANJIBHAI B. GUJRAT *v.* NAVAZBAI. **I. L. Rep. 2 Bom. 75.**

Under **Administration. 2.**

TIME-BARRED DECREE—Admissibility of—as Evidence.

See **Judgment Ex-parte. 2,** and *see* **Res Judicata. 12.**

BIRCHUNDER *v.* HURRISH CHUNDER...**I. L. Rep. 3 Cal. 383.**

TIME-BARRED DECREE, REVIVAL OF.

See **Limitation. 43. 44.**

MUNGOL PRASHAD *v.* SHAMA KANTO...**I. L. Rep. 4 Cal. 708.**

KALLY PROSUNNO *v.* HEERA LALL. **I. L. Rep. 2 Cal. 468.**

And *see* **Kistbandi.**

HEERA LALL *v.* DHUNPUT SINGH.. **I. L. Rep. 4 Cal. 500.**

TIME, OF THE ESSENCE OF THE CONTRACT.

See **Contract. 9.**

SOOLTAN CHAND *v.* SCHILLER... **I. L. Rep. 4 Cal. 252.**

"TIRVAI" (RENT)—Sale for Arrears—Right of Official Assignee.

See **Insolvency. 2.**

CHINNA S. MUDALI *v.* KANDASVAMI REDDI ..**I. L. Rep. 1 Mad. 59.**

TITLE—Decision of Question of—in Application under § 95, Act XVIII. of 1873, by Revenue Court—Subsequent Suit.

See **Res Judicata. 15.**

SHIMBHU NARAIN SINGH *v.* BACHCHA...**I. L. Rep. 2 All. 200.**

—— Evidence of.

See **Limitation. 7.**

MOHIMA CHUNDER *v.* HURRO LALL ..**I. L. Rep. 3 Cal. 768.**

—— Incidental Determination of—in Suit for Rent Cognizable by Small Cause Court—Subsequent Suit to try Title.

See **Res Judicata. 8.**

INAYAT KHAN *v.* RAHMAT BIBI... **I. L. Rep. 2 All. 97.**

TITLE—*contd.*

—— To Land—Power of Small Cause Court, Presidency Town, to determine Question of.

See **Small Cause Court—Presidency Town. 2. 3.**

NOWLA *v.* BALA.....**I. L. Rep. 2 Bom. 91.**

WALJI *v.* JUGGANATH...**Ibid. 84.**

—— Question of—cannot be judicially determined in Application under Act XXVII. of 1860.

See **Certificate to collect Debts. 3.**

KOONJ BEHARY *v.* GOCOOL CHUNDER...**I. L. Rep. 3 Cal. 616.**

—— Question of—incidentally determined in Suit Cognizable by Small Cause Court.

See **Appeal—Civil. 32.**

MOHESH MAHTO *v.* SHEIK PIRU... **I. L. Rep. 2 Cal. 470.**

TITLE-DEEDS—SUIT TO RECOVER—

Jurisdiction—Letters Patent (Calcutta), § 11.] A suit to recover title deeds, though it may involve a question of title, is not a suit to obtain possession of land, or to deal in any way with the land itself, within the meaning of § 11 of the Charter. JUGGERNATH DOSS *v.* BRIJNATH DOSS. *Garth*, C. J., and *Markby*, J....**I. L. Rep. 4 Cal. 322, 1878.**

TITLE BY ESTOPPEL.

See **Sale in Execution of Decree. 19.**

ALUKMONEE *v.* BANEE MADHUB .. **I. L. Rep. 4 Cal. 677.**

TITLE OF ORIGINAL OWNER OF STOLEN CURRENCY NOTE.

See **Government Currency Note.**

EMPRESS *v.* JOGESSUR MOCHI...**I. L. Rep. 3 Cal. 379.**

TITLE TO SOIL OF ROAD—*Private Occupation—Road.*] "It does not very clearly appear from the evidence to whom the land called the blind lane belongs. The plaintiff has made an attempt to claim one-half of it as his own, on the ground that as it was a road lying between his house and his neighbour's, the presumption of law was that he was entitled to the half of it *usque ad medium filum* of the space between the two houses. We think, however, that there is nothing in the point.

Digitized by Google

TITLE TO SOIL OF ROAD—*contd.*

"The presumption on which the plaintiff founds his claim is only applicable to a highway, and not to a private occupation road."

Per Garth, C.J., in SHAM CHURN AUDDY *v.* TARINEY CHURN BANNERJEE...**I. L. Rep. 1 Cal. 422, 428, 1876.**

S. C. under **Easement. 1.**

See **Ownership of Site of Road.**

TOLLS, FARMING OF.

See **Madras Act III. of 1871. 3.**

GOODRICH *v.* VENKANNA.....**I. L. Rep. 2 Mad. 105.**

TORA GARAS HAK.

See **Pensions Act XXIII. of 1871. 2.**

PARBHUDAS *v.* MOTIRAM.....**I. L. Rep. 1 Bom. 203.**

—— *Limitation Act XIV. of* 1859, *§ 1, Cl.* 12 *and* 16—*Immoveable Property.*] *Tora Garas*, though originally payments exacted by the Garassias from the village communities in certain territories in Western India by violence and wrong, and in the nature of black mail had, when those territories fell under British rule, acquired by long usage a *quasi*-legal character as customary annual payments; and as such they were recognized by the British Government, which took upon itself the payment of such of them as were previously payable by villages paying revenue, and left the liability to pay such of them as were payable by *inam* villages to fall on the *inamdar*. *Tora garas haks* of the former description constitute a recognized species of property capable of alienation, and of seizure and sale under an execution.

The application within proper limits of the rule laid down in *Balvantrao* v. *Purshotam Sidheswar* (9 Bom. H. C. Rep. 99)—that inasmuch as the term "immoveable property" is not defined by Act XIV. of 1859, it must, when the question concerns the rights of Hindus, be taken to include whatever the Hindu law classes as immoveable, though not such in the ordinary acceptation of the term—is unobjectionable. The question must be, in every case, whether the subject of the suit is in the nature of immoveable property, or of an interest in immoveable property; and if its nature and quality can only be determined by Hindu law and usage, the Hindu law may properly be invoked for that purpose.

TORA GARAS HAK—*contd.*

The question whether a *tora garas hak* is an interest in immoveable property within the meaning of Act XIV. of 1859 is one which ought not to be determined by Hindu law. The *haks*, as they now exist, may pass to, and be held by Mahomedans, Parsees, and Christians; and the applicability of particular sections of Act XIV. of 1859, a general Statute of Limitations, must be determined by the nature of the thing sued for, and not by the status, race, character, or religion of the parties to the suit.

The term "immoveable property" in Act XIV. of 1859 is not identical with "lands or houses"; it comprehends all that would be real property according to English law, and possibly something more.

An hereditary right to *toda garas* payable by an *inamdar* out of the rents of a village possesses the qualities of immobility and of indefinite duration, in a degree which, if the question depended on English law, would entitle it to the character of a freehold interest in, or issuing out of, real property; and on the general principles of construction applicable to an Indian statute, must be held to be an "interest in immoveable property" within the meaning of Act XIV. of 1859, and a claim for arrears of it for upwards of six years is not barred by Cl. 16 of § 1 of that Act.

The question whether the arrears for more than six years next preceding the institution of the suit could be recovered was not decided, the suit being remanded for trial on the merits. MAHA RANA FATTEHSANGJI JASWATSANGJI *v.* DESAI KALIANRAI HEKOOMUTRAIJI...**L. Rep. 1 I. A. 34, 1873; 10 Bom. H. C. Rep. 281; 13 Beng. L. R. 254; 21 W. R. 178.**

TRADE FIXTURES——Sale of—in Execution of Decree of Small Cause Court.

See **Fixtures.**

MILLER *v.* BRINDABUN...**I. L. Rep. 4 Cal. 946.**

TRADE-MARK—*Injunction to restrain Use of Trade Marks—Combination of Figures.*] The plaintiffs from 1872 imported and sold an article described as 7½ lbs. grey shirtings, and marked as follows:—In the centre of each piece of cloth a stamp in blue colour of a turtle in a star, with the words "Trade-Mark;" underneath in a semicircular form, was the name "Fleming,

Digitized by Google

TRADE-MARK—*contd.*

Galbraith, & Co., Manchester," and under this the number 39 within a star, and at the bottom of each piece the number 2008. In 1877, the plaintiffs discovered that the defendants were importing from the same manufacturers, and selling cloth of a similar quality marked as follows:—A stamp in blue colour of a rose in a square; underneath, the words "Ralli and Mavrojani" arranged in a semicircular form, and under that the number 39 in a star, and at the bottom the number 2008. On the facts of the case, *Macpherson*, J., granted an *interim* injunction to restrain the defendants from so marking their cloth, on the ground that it was a colourable imitation, of the plaintiffs' mark, and calculated to mislead the public; and on appeal *Garth*, C.J., and *Markby*, J., upheld that decision so far as to continue the injunction.

Held, per Garth, C.J.—If the defendants' combination were so different from the plaintiffs' that the public could not reasonably be deceived by the use of it, or if the number 2008 was merely a manufacturer's number, or was used generally by the trade to designate a particular kind or quality of cloth, the defendants would have as much right to use either the combination or the number as the plaintiffs. But if the object of the defendants in using the number and imitating the plaintiffs' combination was, or if the natural consequence of their doing so would be, to induce the public to believe that the goods which they were selling were imported by, or came from, the plaintiffs' house, then, in point of law, the defendants would not be justified in thus deceiving the public.

Under the circumstances, the use by the defendants of their marks would be calculated to deceive the public into the belief that the goods which they were buying were goods imported and sold by the plaintiffs.

Per Markby, J.—When a trader specially selects and appropriates to himself, for the purpose of distinguishing his goods, a particular device, that device becomes his trade-mark proper, and no one else is allowed to use it. But if, without any such special selection and appropriation, the goods of the trader do in fact happen to bear some particular mark, and this mark has come to be associated by the public with the trader's name, so that all goods bearing that mark are supposed to come from him, then also the law will not allow any person to use a mark of this latter description, any more than it will allow him to use a rival trader's trade-mark proper, because in either case there is made, or there is assumed to be made, a representation to the public which is false, *viz.*, that the goods which are the goods of one trader are the goods of another. But this distinction is drawn between the two cases. If it be shown that a trader has infringed a rival trader's trade-mark proper—*i. e.*, the mark which another trader has specially selected and appropriated for the purpose of distinguishing his goods—the Court will, without further evidence, at once interfere, taking it for granted that such a proceeding is calculated to deceive the public; whereas if the mark be one which has not been specially selected and appropriated by the trader for this purpose, evidence must be given to show that the mark was so understood by the public as to make it clear that the proceeding had either deceived, or was at least calculated to deceive, the public. The figures "2008" were not part of the plaintiff's trade-mark proper; nor on the evidence were they so associated with the plaintiff's name as to indicate, in the understanding of the public, that goods of the description in question bearing that number came from their firm as importers; on the evidence it was merely a quality mark, and therefore not calculated to mislead the public into the belief that they were purchasing the plaintiff's goods while in fact they were purchasing those imported by the defendants.

Semble—That there may be a right to an exclusive use of a trade-mark by traders who are importers only. RALLI *v.* FLEMING...**I. L. Rep. 3 Cal. 417; 2 Cal. Rep. 93, 1878.**

TRADESMAN'S ACCOUNT.

See **Small Cause Court—Presidency Town. 4.**

CASSUM *v.* LILLADUR...**I. L. Rep. 2 Bom. 570.**

TRANSFER OF ASSETS TO NEW COMPANY—Right of Creditors and Dissenting Shareholders of Transferring Company.

See **Company—Winding up. 1.**

In re THE FLEMING SPINNING AND WEAVING CO., LIMITED...**I. L. Rep. 3 Bom. 299.**

Digitized by Google

TRANSFER OF CASE.

See **Criminal Procedure Code, Act X. of 1872, § 64.**

REG. *v.* ZUHIRUDDIN...**I. L. Rep. 1 Cal. 219.**

TRANSFER OF CASE TO THE HIGH COURT.

See the Cases collected under **High Court Criminal Procedure, Act X. of 1875, § 147.**

TRANSFER OF CASE BY JUDICIAL COMMISSIONER FROM SESSION TO HIS OWN COURT—Appeal from Sentence to Special Court at Rangoon.

See **Jurisdiction. 17.**

EMPRESS *v.* TSIT OOE...**I. L. Rep. 4 Cal. 667.**

TRANSFER OF DECREE FOR EXECUTION—Application for—is Application to keep Decree in Force.

See **Execution of Decree. 18.**

COLLINS *v.* MAULA BAKHSH.....**I. L. Rep. 2 All. 284.**

—— Powers of Court to which there has been a.

See **Execution of Decree. 12. 17.**

SHIB NARAIN *v.* BEPIN BEHARY... **I. L. Rep. 3 Cal. 512.**

KADIR BAKSH *v.* ILAHI BAKSH... **I. L. Rep. 2 All. 283.**

TRANSFER OF JURISDICTION.

See the Cases under **Cession of Territory** and **Legislative Power of the Governor-General of India in Council.**

TRANSFER OF LAND CHARGED WITH THE PAYMENT OF AN ALLOWANCE FOR DOWER.

See **Covenant running with the Land.**

ABADI BEGUM *v.* ASA RAM...**I. L. Rep. 2 All. 162.**

TRANSFER OF MAGISTRATE.

See **Criminal Procedure Code, Act X. of 1872, § 56.**

PURSOORAM BOROOAH ..**I. L. Rep. 2 Cal. 117.**

TRANSFER OF A PORTION OF OCCUPANCY HOLDING—The existence of a custom in a particular district by which rights of occupancy in such district are transferable, will not justify the holder of such a right of occupancy in subdividing his tenure, and transferring different parts of it to different persons; and in case of such transfer, the zemindar is entitled to treat the transferees as trespassers, and eject them. TIRTHANUND THAKOOR *v.* MUTTY LALL MISSER. *Garth*, C.J., and *McDonnell*, J.....**I. L. Rep. 3 Cal. 774, 1878.**

TRANSFER OF PROCEEDINGS IN EXECUTION BY DISTRICT JUDGE FROM SUBORDINATE COURT, TO HIS OWN.

See **Civil Procedure Code, Act VIII. of 1859, § 6.**

GAYA PARSHAD *v.* BHUP SINGH... **I. L. Rep. 1 All. 180.**

TRANSFER OF RIGHT OF OCCUPANCY.

See **Right of Occupancy. 2. 4.**

DWARKA NATH *v.* HURRISH CHUNDER.....**I. L. Rep. 4 Cal. 925.**

ABLAKH RAI *v.* UDIT N. RAI.....**I. L. Rep 1 All. 353.**

See **Act XVIII. of 1873, § 9. 1.**

UMRAO BEGUM *v.* LAND MORTGAGE BANK...**I. L. Rep. 1 All. 547.**

TRANSFER OF SHARES—Right to refuse Registration of.

See **Presidency Banks Act XI. of 1876, §§ 17, 21.**

MOTHOORMOHUN *v.* BANK OF BENGAL.....**I. L. Rep. 3 Cal. 392.**

TRANSFER OF SUIT—Act VIII. of 1859, §§ 11, 12, 13.

See **Petition for Leave to Sue in Forma Pauperis.**

SKINNER *v.* ORDE...**L. Rep. 6 I. A. 126; I. L. Rep. 2 All. 241.**

TRANSPORTATION FOR LIFE—Offence punishable with—or Imprisonment for Term of Years.

See **Penal Code, § 59.**

REG. *v.* NAIADA...**I. L. Rep. 1 All. 43.**

Digitized by Google

TRAVELLING BY RAILWAY WITHOUT A TICKET.

See **Railway Company. 4.**

PRATAB DAJI *v.* THE B. B. & C. I. RY. CO...**I. L. Rep. 1 Bom. 52.**

TREES—Planting—and Sinking Wells, contrary to Condition in Lease.

See **Forfeiture. 1.**

ABLAKH RAI *v.* SALIM AHMED KHAN.....**I. L. Rep. 2 All. 437.**

TRESPASS—Passenger by Railway without Ticket.

See **Railway Company. 4.**

PRATAB DAJI *v.* THE B. B. & C. I. RY. CO...**I. L. Rep. 1 Bom. 52.**

TRESPASSER—Mesne Profits—Liability of Trespasser—Allowances.

See **Mesne Profits. 3.**

ALTAF ALI *v.* LALJI MAL ..**I. L. Rep. 1 All. 518.**

TRIAL WITH THE AID OF ASSESSORS—Omitting to take or record Opinion of Assessors on Acquittal of Accused no Ground for Revision.

See **Assessors.**

NARAIN DAS...**I. L. Rep. 1. All. 610.**

TRIAL BY JURY—Acquittal—Appeal.

See the Index headings **Acquittal and Appeal—Criminal.**

—— Acquittal by Majority—Dissent of Judge—Reference—Power of High Court.

See **Criminal Procedure Code, Act X. of 1872, § 263. 1. 2. 3. 4.**

IMPX. *v.* KHANDERAV...**I. L. Rep. 1 Bom. 10.**

IMPX. *v* BHAWANI.....**Ibid. 525.**

EMPRESS *v.* HARAI...**I. L. Rep. 3 Cal. 623.**

EMPRESS *v.* SAHAE RAE...**I. L. Rep. 3 Cal. 623.**

—— Constitution of Jury.

See **High Court Criminal Procedure, Act X. of 1875, § 33.**

REG. *v.* LALUBHAI...**I. L. Rep. 1 Bom. 232.**

REG. *v.* VITHALDAS... **Ibid. 462.**

TRIAL BY JURY—*contd.*

—— *Offence Triable by Assessors — Appeal.*] The trial by a jury of an offence triable with assessors is not invalid on that ground, but the accused, who would have been entitled to an appeal on the facts if the case had been tried with assessors, is not debarred from that right merely because the trial by jury is not invalid.

Mitter, J., did not express any opinion as to whether an appeal on the facts lay in such a case. EMPRESS *v.* MOHIM CHUNDER RAI. *Mitter* and *Maclean*, JJ.....**I. L. Rep. 3 Cal. 765, 1878.**

TROVER—Action in—by Wife against Husband.

See **Husband and Wife.**

HARRIS *v.* HARRIS...**I. L. Rep. 1 Cal. 285.**

—— Goods pledged by Servant.

See **Contract. 15.**

BIDDOMOYI DABEE *v.* SITTARAM... **I. L. Rep. 4 Cal. 497.**

"TRUE AND JUST ACCOUNTS."

See **Master and Servant. 1.**

MACGILLIVRAY *v.* JOKAI ASSAM TEA CO...**I. L. Rep. 2 Cal. 33.**

TRUST.

—— Breach of.

See the Cases under **Breach of Trust—Criminal Breach of Trust.**

—— Constructive.

See **Insolvency. 3.**

See **Limitation. 26. 27. 38. 38a. 61.**

—— In Favour of Idol.

See the Cases under **Dewuttur.**

See **Hindu Law—Partition. 7.**

RAM COOMAR *v.* JOGENDER NATH. **I. L. Rep. 4 Cal. 56.**

—— Implied.

See **Limitation. 26. 27. 38. 38a. 61.**

And *see* **Act I. of 1869. 2. 5. 6. 7.**

—— Precatory—Will.

See **Will. 6.**

RAYNOR *v.* THE MUSSOORIE BANK. **I. L. Rep. 2 All. 55.**

—— Resulting.

See **Limitation. 38.**

KHERODEMONEY *v.* DOORGAMONEY. **I. L. Rep. 4 Cal. 455.**

Digitized by Google

TRUST—*contd.*

——*Sanad* by Government after Oudh Proclamation of 1858, Title by, may be affected by.

See **Act I. of 1869. 2. 5. 6. 7.**

WIDOW OF SHUNKER SAHAI *v.* RAJAH KASHI PERSHAD...**L. Rep. 4 I. A. 198.**

THAKOOR HARDEO BUX *v.* THAKOOR JAWAHIR SINGH ... **L. Rep. 4 I. A. 178; I. L. Rep. 3 Cal. 522; L. Rep. 6 I. A. 161.**

THAKOOR SHERE BAHADUR *v.* THAKURANI DARIAO KUAR... **I. L. Rep. 3 Cal. 645.**

—— "For Specific purpose."

See **Limitation. 26. 27. 38. 38a. 61.**

1. —— Wajib-ul-Arz, *or Record of Rights—Entry in—Purchaser* bonâ fide *and for Value without Notice—Limitation.*] In 1840 the purchasers and recorded proprietors of a four-*biswas* share of a certain village caused a statement to be recorded in the village record of rights, to the effect that *B.* claimed to be the proprietor of a moiety of such share, and that they were willing to admit his right whenever he paid them a moiety of the sum they had paid in respect of arrears of revenue due on such share. In 1843 *M.* purchased the share and became its recorded proprietor. In 1877 *R.*, the son of *B.*, sued *M.*'s representative for possession of a moiety of such share, alleging with reference to the statement recorded in the record of rights, that such moiety vested in *M.*'s assignors in trust to surrender it to *B.*, or his heirs, on payment of a moiety of the sum they had paid on account of arrears of revenue, and paying such sum into Court:—

Held, that the statement in the record of right did not amount to a trust such as the plaintiff set up, and that, even assuming that the alleged trust existed, yet the suit was barred by limitation, *M.* having purchased without notice of the trust and for valuable consideration. KAMAL SINGH *v.* BATUL FATIMA. *Spankie* and *Oldfield*, JJ ..... **I. L. Rep. 2 All. 460, 1879.**

See PIAREY LAL *v.* SALIGA... **I. L. Rep. 2 All. 394.**

Under **Limitation. 27.**

2. —— Wajib-ul-Arz, *or Record of Rights—Entry in—Limitation.*] The plaintiffs sued for possession of land and a house in a village, alleging that their ancestors had left the village thirty years before, entrusting the property in suit to the defendants' father, to be held by him on condition that, whenever they or their children returned to the village, the property should be restored to them; and that the defendants' father, and, after him, the defendants themselves, had accepted the trust, and admitted and caused it to be recorded in the village administration paper. The defendants denied the trust, and pleaded adverse possession for forty years. The clause of the village administration paper on which the plaintiffs relied, after mentioning the name of the plaintiffs' ancestors as "absent shareholders," proceeded:— "Whenever the absent shareholder, or his descendants, returns, and settles in the village, he shall immediately be put in possession of his property without taking any account of profit and loss; the person occupying the property shall not object to relinquish his occupation of the said property; if from any cause the share of the present occupier is transferred, the property of the absent shareholder shall be held by the brother of the present shareholder, or by one belonging to the same stock; whenever the absent shareholder, or his descendants, returns and settles in the village, effect will be given to the above condition."

The lower Appellate Court found that there was no satisfactory evidence of the trust alleged by the plaintiffs, and that the village administration paper was not proof of such trust, and that the defendants had established a title by adverse possession. On second appeal:—

Held, affirming that decision, that the Judge had not acted erroneously in refusing to accept the entry in the village administration paper as conclusive evidence of the trust. A village administration paper does not necessarily constitute a valid trust. It may be evidence of a trust, but in the present case, as regards the share in dispute, the persons entered as "absent shareholders" were neither present in the village when the settlement was in progress, nor were they assenting parties to the arrangement recorded in the administration paper. There was no declaration of any pre-existing trust as between the absentees and the occupants of their shares. Accepting, therefore, the finding of the lower Appellate Court on the matter of fact that there was no evidence to establish the trust, their Lordships dismissed the appeal. HARBHAJ *v.* GUMANI. *Stuart*, C.J., and *Spankie*, J...**I. L. Rep. 2 All. 493, 1879.**

Digitized by Google

TRUST DEED FOR BENEFIT OF CREDITORS.

See **Principal and Surety. 4.**

POGOSE *v.* BANK OF BENGAL ..... **I. L. Rep. 3 Cal. 174.**

TRUST DEED WITH POWER OF SALE OF LAND IN MOFUSSIL—Suit by Creditor to have Trust carried out.

See **Suit for Land. 2.**

DELHI AND LONDON BANK *v.* WORDIE...**I. L. Rep. 1 Cal. 249.**

TRUST PROPERTY — Does not vest in Official Assignee of Insolvent Trustee.

See **Insolvency. 7.**

VARDALA CHARRI ... **I. L. Rep. 2 Mad. 15.**

—— Sale of—by Trustee.

See **Breach of Trust.**

MANICKLAL *v.* MANCHERSHA..**I. L. Rep. 1 Bom. 269.**

See **Alienation of Right of Management of a Pagoda.**

RAJAH VURMAH VALIA *v.* RAVI VURMAH MUTHA...**L. Rep. 4 I. A. 76.**

TRUSTEE—Constructive.

See **Insolvency. 3.**

See **Limitation 26. 27. 38. 38a. 61.**

—— Executor—Undisposed-of Residue.

See **Executor—Estate of. 2.**

LALUBHAI *v.* MANKUVERBAI...**I. L. Rep. 2 Bom. 388.**

—— Purchase by a.

See **Purchase by Trustee.**

DHONENDER CHUNDER *v.* MUTTEY LALL...**L. Rep. 2. I. A. 18.**

—— Registered Talookdar may be.

See **Act I. of 1869. 2. 5. 6. 7.**

—— Sale by—of Trust Property.

See **Breach of Trust.**

MANICKLAL *v.* MANCHERSHA...**I. L. Rep. 1 Bom. 269.**

See **Alienation of Right of Management of a Pagoda.**

RAJAH VURMAH VALIA *v.* RAVI VURMAH MUTHA...**L. Rep. 4 I. A. 76.**

TRUSTEE AND CESTUI-QUE-TRUST.

See **Suit for Land. 2.**

DELHI AND LONDON BANK *v.* WORDIE...**I. L. Rep. 1 Cal. 249.**

TRUSTEE AND MANAGER OF HINDU TEMPLE—Criminal Breach of Trust by.

See **Criminal Breach of Trust.**

ANON. ...**I. L. Rep. 1 Mad. 55.**

TRUSTEESHIP—SALE OF.

See **Alienation of the Right of Management of a Pagoda.**

RAJAH VURMA VALIA *v.* RAVI VURMA MUTHA...**L. Rep. 4 I. A. 76.**

TULLUBI BROMUTTUR TENURE.

See **Enhancement of Rent. 6.**

NIL MONEY SINGH *v.* CHUNDERKANT.....**I. L. Rep. 3 Cal. 125.**

ULTRA VIRES.

See **Act VI. of 1874, § 5.**

FEDA HOSSEIN...**I. L. Rep. 1 Cal. 431.**

See **Injunction. 3.**

SHEPHERD *v.* TRUSTEES OF PORT OF BOMBAY.....**I. L. Rep. 1 Bom. 132.**

See **Power of Directors to bind Company by Bill of Exchange.**

In the matter of THE NEW FLEMING S. & W. Co., LIMITED.....**I. L. Rep. 3 Bom. 439.**

—— Rules of Bombay Government of 1st February 1869.

See **Bombay Act I. of 1865, § 35.**

COLLECTOR OF THANA *v.* DADABHAI BOMANJI...**I. L. Rep. 1 Bom. 352.**

UNASCERTAINED CLASS—GIFT TO.

See **Hindu Law—Will. 4. 5.**

KHERODEMONEY *v.* DOORGAMONEY...**I. L. Rep. 4 Cal. 455.**

SOUDAMONEY *v.* JOGESH CHUNDER. **I. L. Rep. 2 Cal. 262.**

Digitized by Google

UNAUTHORIZED ENTRY AND ARREST—Gambling—Direct Evidence of House being Gaming-House — Bengal Act II. of 1867, §§ 5 and 6.

See **Gambling.**

NAZIR KHAN *v.* PROLADH DUTTA. **I. L. Rep. 4 Cal. 659.**

UNAUTHORIZED SALE BY GUARDIAN—Purchase-Money applied in Payment of Mortgage Debt — Subsequent Purchaser at Auction Sale in Execution.

See **Lien. 1.**

KUVARJI *v.* MOTI HARIDAS...**I. L. Rep. 3 Bom. 234.**

UNCERTAINTY.

See **Will. 7.**

DWARKANATH *v.* BURRODA PERSAUD.....**I. L. Rep. 4 Cal. 443.**

—— Charitable Bequest.

See **Hindu Law—Will. 3.**

SURBO MUNGOLA *v.* MOHENDRO NATH.....**I. L. Rep. 4 Cal. 508.**

UNCERTIFICATED GUARDIAN — Power of.

See **Alienation by Guardian. 2.**

RAM CHUNDER *v.* BROJONATH..... **I. L. Rep. 4 Cal. 929.**

See **Mahomedan Law—Sale by Guardian.**

HASAN ALI *v* MEHDI HUSSAIN... **I. L. Rep. 1 All. 533.**

See **Mortgage. 30. 31.**

ABHASEE BEGUM *v.* MOHARANEE RAJROOP...**I. L. Rep. 4 Cal. 33.**

DEBI DUTT SAHOO *v.* SUBOODRA BIBEE...**I. L. Rep. 2 Cal. 283.**

See **Review. 10.**

MAHDO DAS *v.* RUKHMAN SEWAK SINGH...**I. L. Rep. 2 All. 287.**

See **Sale by Guardian.**

SOONDAR NARAIN *v.* BENNUD RAM...**I. L. Rep. 4 Cal. 76.**

UNCHASTITY.

—— Of Hindu Mother, Disqualifies from Inheriting to Son.

See **Hindu Law—Disqualification to Inherit. 5.**

RAMNATH *v.* DURGA SUNDARI...**I. L. Rep. 4 Cal. 550.**

—— Of Hindu Widow After Inheritance Vested —Works no Forfeiture.

See **Hindu Law—Disqualification to Inherit. 4.**

BHAVANI *v.* MAHTAB ..**I. L. Rep. 2 All. 171.**

See **Hindu Law — Inheritance — Widow. 1.**

NEHALO *v.* KISHEN...**I. L. Rep. 2 All. 150.**

See **Hindu Law — Maintenance of Widow. 12.**

HONAMA *v.* TIMANBHAT...**I. L. Rep. 1 Bom. 559.**

—— Of Hindu Woman, does not Disqualify from Inheriting, or Keeping Inherited *Stridhan.*

See **Hindu Law—Disqualification to Inherit. 3.**

MUSST. GUNGA *v.* GHASITA...**I. L. Rep. 1 All. 46.**

—— Unfounded Charge of—against Wife not, *per se*, Cruelty.

See **Restitution of Conjugal Rights. 1.**

YAMUNABAI *v.* NARRAYAN M. PENDSE...**I. L. Rep. 1 Bom. 164.**

UNCONSCIONABLE BARGAIN.

See **Contract. 13.**

VENKITTARAMA *v.* KIMBARATH... **I. L. Rep. 1 Mad. 349.**

Usury.] The defendant, a Hindu of the age of sixteen years and one or two months, borrowed money from the plaintiff, a professional money-lender, on a bond bearing interest at 36 per cent. per annum. *Phear*, J., *held* on the merits of the case, that the transaction was wholly unconscionable, and one which a Court of Equity would not enforce.

Held, on appeal (*Garth*, C.J., and *Macpherson*, J.), that the plaintiff was only entitled to a decree for the sum actually received from him by the defendant with interest at 6 per cent. per annum.

Digitized by Google

UNCONSCIONABLE BARGAIN—*contd.*

It is an entire mistake to suppose that because the law against usury has been repealed, a money-lender can enforce such a contract made with a young man who has only just attained the age of majority. The jurisdiction of the Court over unconscionable bargains of this nature is not affected by the repeal of the usury laws. MOTHOORMOHUN ROY *v.* SOORENDRO NARAIN DEB.....I. L. Rep. 1 Cal. 109, 120, 1875.

S. C. under **Age of Majority.**

Equitable Relief Against Extortionate Bargain—Promissory Note—Interest deducted in Advance.] The Court will not protect persons who, with their eyes open, choose wilfully and knowingly to enter into unconscionable and extortionate bargains.

It is only where a person enters into an inequitable bargain, and it is shown that he was in ignorance of the unfair nature of the transaction, that the Court is justfied in interfering. MACKINTOSH *v.* WINGROVE. *Garth*, C.J., and *Markby*, J.....I. L. Rep. 4 Cal. 137; 2 Cal. Rep. 433, 1878.

UNDERTAKING NOT TO SUE.

See **Privilege from Arrest.**

OMRITOLALL DEY...I. L. Rep. 1 Cal. 78.

UNDER-TENURE — Limitation to Suit to Cancel.

See **Sale of Under Tenure. 2.**

UNNODA CHURN *v.* MOTHURA NATH...I. L. Rep. 4 Cal. 860.

—— Sale of.

See **Sale of Under Tenure. 1. 2.**

BHUGEERUTH *v.* MONEERAM...I. L. Rep. 4 Cal. 855.

UNNODA CHURN *v.* MOTHURA NATH.....Ibid. 860.

—— Sale of—under Decree for Arrears of Rent—Mortgagee's Right to Notice.

See **Sale of Under Tenure. 3.**

LAIDLEY *v.* GUNNESS CHUNDER SAHOO...I. L. Rep. 4. Cal. 438.

UNDER-TENURE—*contd.*

—— Sale of—in Execution of Decree for Arrears of Rent—Process against other Immoveable Property of Debtor.

See **Beng. Act VIII. of 1869, § 61**

HARRISH CHUNDER ROY *v.* COLLECTOR OF JESSORE...I. L. Rep. 3 Cal. 712

—— Sale of—Growing Crops pass on—unless excepted Specially or by Custom.

See **Beng. Act VIII. of 1869, § 66.**

AFATOOLLAH *v.* DWARKA NATH. I. L. Rep. 4 Cal. 814.

UNDER-TENURE, SUIT TO AVOID.

See **Sale for Arrears of Revenue. 1.**

BAGHO BIBEE *v.* RAM KANT...I. L. Rep. 3 Cal. 293.

UNDISPOSED-OF RESIDUE.

See **Executor—Estate of. 2.**

LALLUBHAI *v.* MANKUVARBAI...I. L. Rep. 2 Bom. 388.

UNDIVIDED HINDU FAMILY—Alienation by Member of—of his Share in Ancestral Property of—by Voluntary Alienation.

See **Hindu Law—Alienation of Ancestral Property. 2. 3. 4. 5. 7.**

GIRDHAREE LALL *v.* KANTOO LALL. L. Rep. 1 I. A. 321; 14 Beng. L. Rep. 187.

MUSST. PHOOLBAS KUAR *v.* LALLA JOGESHUR...L. Rep. 3 I. A. 7; I. L. R. 1 Cal. 226.

SURAJ BANSI KUAR *v.* SHEO PERSHAD SINGH...L. Rep. 6 I. A. 88.

JALLIDAR SINGH *v.* RAM LAL...I. L. Rep. 4 Cal. 723.

CHAMAILI KUAR *v.* RAM PRASAD... I. L. Rep. 2 All. 267.

See **Hindu Law—Gift. 2.**

BALLABH DAS *v.* SUNDER DASS... I. L. Rep. 1 All. 429.

See **Hindu Law — Undivided Family. 3.**

DEENDAYAL *v.* JUGDEEP...L. Rep. 4 I. A. 247; I. L. Rep. 3 Cal. 198.

Digitized by Google

UNDIVIDED HINDU FAMILY—*contd.*

See **Onus Probandi. 7. 8.**

ADURMONI DEYI *v.* CHOWDHRY SIB NARAIN KUR...**I. L. Rep. 3 Cal. 1.**

BHEEKNARAIN SINGH *v.* JANUK SINGH.....**I. L. Rep. 2 Cal. 438.**

—— Attachment and Sale of Coparcener's Interest in Undivided Property of.

See **Bombay Act V. of 1862. 2.**

ARDASIR *v.* MUSE...**I. L. Rep. 1 Bom. 601.**

See **Civil Procedure Code, Act VIII. of 1859, § 269.**

KALAPA *v.* VENKATESH.....**I. L. Rep. 2 Bom. 676.**

See **Hindu Law—Alienation of Ancestral Property. 1 to 5.**

BHIKAN DAS *v.* PURA...**I. L. Rep. 2 All. 141.**

GIRDHAREE LALL *v.* KANTOO LALL. **L. Rep. 1 I. A. 321; 15 Beng. L. Rep. 187.**

PHOOLBAS KOONWAR *v.* LALLA JOGESSUR...**L. Rep. 3 I. A. 7; I. L. Rep. 1 Cal. 226.**

SURAJ BUNSI KOER *v.* SHEO PERSHAD...**L. Rep. 6 I. A. 88.**

JALLIDAR SING *v.* RAM LALL.....**I. L. Rep. 4 Cal. 723**

See **Hindu Law—Gift. 2.**

BALLABH DAS *v.* SUNDER DAS..**I. L. Rep. 1 All. 429.**

See **Hindu Law—Liability of Ancestral Estate in the hands of the Heir to the Debts of the Father**

NARAYAN *v.* NARSO...**I. L. Rep. 1 Bom. 262.**

See **Hindu Law—Undivided Family. 3. 4. 7. 8.**

RAI NARAIN DAS *v.* NOWNIT LAL... **I. L. Rep. 4 Cal. 809.**

DEENDAYAL *v.* JUGDEEP...**L. Rep. 4 I. A. 247; I. L. Rep. 3 Cal. 198.**

LUCHMI DAI KOORI *v.* ASMAN SINGH...**I. L. Rep. 2 Cal. 213.**

BABAJI *v.* VASUDEV...**I. L. Rep. 1 Bom. 95.**

UNDIVIDED HINDU FAMILY—*contd.*

See **Sale in Execution of Decree. 10. 15.**

VENKATARAMYYAN *v.* VENKATASUBBRAMANIA...**I. L. Rep. 1 Mad. 38.**

VENKATASAMI *v.* KUPPAIYAN..**Ibid. 354.**

—— Certificate of Administration to Estate and Guardianship of Minor Children of Deceased Member of—cannot be granted where no Separate Estate.

See **Certificate of Administration. 1.**

GURACHARYA *v.* SVAMIRAYACHARYA...**I. L. Rep. 3 Bom. 431.**

—— Compromise by Father when Binding on Son.

See **Compromise. 2.**

PITAM SINGH *v.* UJAGAR SINGH... **I. L. Rep. 1 All. 651.**

—— Gift by Member of—of his Share in Undivided Property of.

See **Hindu Law—Gift. 2.**

BALLABH DAS *v.* SUNDER DAS... **I. L. Rep. 1 All. 429.**

—— Gift by Father of Self-Acquired Immoveable Property to One Son to Exclusion of Others.

See **Hindu Law—Undivided Family. 1.**

SITAL *v.* MADHO.....**I. L. Rep. 1 All. 394.**

—— Manager—Power of—to pledge Joint Ancestral Property for purposes of Joint Ancestral Trade—Insolvency—Title of Official Assignee.

See **Hindu Law—Maintenance of Widow. 9.**

JOHURRA BIBEE *v.* SREEGOPAL MISSER...**I. L. Rep. 1 Cal. 470.**

See **Hindu Law—Ancestral Trade.**

JOYKISTO COWAR *v.* NITTYANUND NUNDY.....**I. L. Rep. 3 Cal. 738.**

See **Hindu Law—Manager.**

KUMARASAMI *v.* PALA...**I. L. Rep. 1 Mad. 385.**

Digitized by Google

UNDIVIDED HINDU FAMILY—*contd.*

—— Mortgage of Ancestral Estate by Father—Suit to Enforce—*Onus Probandi*.

See **Onus Probandi. 7.**

BHEEKNARAIN SINGH *v.* JANUK SINGH...**I. L. Rep. 2 Cal. 438.**

—— Personal Decree against Father—Sale of Family Property in Execution—Right of Son to recover his Share.

See **Sale in Execution of Decree. 10. 15.**

VENKATASAMI NAIK *v.* KUPPAIYAN. **I. L. Rep. 1 Mad. 354.**

VENKATARAMAYYAN *v.* VENKATASUBBRAMANIA.....**Ibid. 358.**

—— Purchase by Member of—with Joint Funds.

See **Hindu Law—Undivided Family. 10.**

BISSESSUR LALL SAHOO *v.* MAHARAJA LUCHMESSUR SINGH... **L. Rep. 6. I. A. 233.**

—— Right of Nephews and Brothers of Deceased Member of—to Succeed.

See the Cases under **Hindu Law—Inheritance—Brothers, and Hindu Law—Inheritance—Nephews.**

—— Suit by One Member of—for a Specific Share.

See **Parties to Suit. 4.**

NATHUNI MAHTON *v.* MANRAJ MAHTON...**I. L. Rep. 2 Cal. 149.**

—— Summary Settlement with, and Grant of Talukdari Sanad, to Member of.

See **Oudh Proclamation of 1858, para. 8. 1.**

HURPURSHAD *v.* SHEO DYAL...**L. Rep. 3 I. A. 259.**

UNDUE INFLUENCE.—Ikrarnamah *set aside.*] An *Ikrarnamah* whereby the three plaintiffs (two of them being under age, and the eldest having only lately attained his majority) parted with half their property without consideration, whilst not fully acquainted with their rights, without professional advice, and during a state of things likely to over-awe them, and materially affect the free exercise of their will, set aside. PREM NARAIN SINGH *v.* PARASRAM SINGH .....**L. Rep. 4 I. A. 101, 1877.**

UNDUE PRESSURE.

See **Champerty. 1.**

CHEDAMBARA *v.* RENGA KRISHNA MUTHU.....**L. Rep. 1 I. A. 241.**

UNFOUNDED CHARGE OF UNCHASTITY AGAINST WIFE NOT, PER SE, CRUELTY.

See **Restitution of Conjugal Rights. 1.**

YAMUNABAI *v.* NARAYEN M. PENDSE...**I. L. Rep. 1 Bom. 164.**

UNINTERRUPTED POSSESSION FOR THIRTY YEARS AS PROPRIETOR.

See **Bombay Act I. of 1865, § 35.**

COLLECTOR OF THANA *v.* DADABHAI BOMANJI...**I. L. Rep. Bom. 352.**

UNLAWFUL ASSEMBLY, ARMED WITH A DEADLY WEAPON.

See **Summary Procedure.**

EMPRESS *v.* ABDOOL KARIM...**I. L. Rep. 4 Cal. 18.**

UNLIQUIDATED DAMAGES CANNOT BE SET-OFF—Against Claim on Mortgage.

See **Set-off. 2.**

RAGHU NATH *v.* ASHRAF HUSAIN. **I. L. Rep. 2 All. 252.**

UNPAID PURCHASE-MONEY—Vendor's Lien for.

See **Vendor and Purchaser. 1.**

TRIMALRAV *v.* THE MUNICIPAL COMMISSIONERS OF HUBLI... **I. L. Rep. 3 Bom. 172**

UNRECOGNIZED PORTION OF A BHAG IN BHAGDARI OR NARWADARI VILLAGE — Attachment of.

See **Bombay Act V. of 1862.**

RANCHODAS *v.* RANCHODAS...**I. L. Rep. 1 Bom. 581.**

ARDASIR *v.* MUSE...**I. L. Rep. 1 Bom. 601.**

Digitized by Google

UNRECORDED COPARTNER, PURCHASE BY—Sale for Arrears of Revenue—Encumbrances.

See **Act XI. of 1859, § 53.**

ABDOOL BARI *v.* RAMDASS CONDOO. **I. L. Rep. 4 Cal. 607.**

UNREGISTERED DEED OF ASSIGNMENT OF MORTGAGE, OF WHICH REGISTRATION NECESSARY——Other Evidence of Assignment Inadmissible.

See **Assignment of Mortgage.**

GANPAT *v.* ADARJI...**I L. Rep. 3 Bom. 312.**

UNREGISTERED DEED OF WHICH REGISTRATION NECESSARY—Admissibility of—in Evidence to prove Breach of Contract.

See **Registration. 28.**

RAJU *v.* KRISHNARAV...**I. L. Rep. 2 Bom. 273.**

UNREGISTERED MORTGAGE DEED—Inadmissibility of—in Suit for Money Lent.

See **Registration. 24. 28.**

MATTONGENEY *v.* RAMNARRAIN... **I. L. Rep. 4 Cal. 38.**

RAJU *v.* KRISHNARAV...**I. L. Rep. 2 Bom. 273.**

UNREGISTERED AND REGISTERED DEEDS—PRIORITY.

See the Index heading **Priority.**

UNSTAMPED OR INSUFFICIENTLY STAMPED DOCUMENT — Improper Admission of—in Evidence.

See **Appeal—Civil. 20.**

KHOOB LALL *v.* JUNGLE SINGH... **I. L. Rep. 3 Cal. 787.**

See **Error not affecting the Merits. 1.**

AFZAL-UN-NISSA *v.* TEJ BAN...**I. L. Rep. 2 All. 725.**

See **Registration. 6.**

SAFDAR ALI KHAN *v.* LACHMAN DAS....**I. L. Rep. 2 All. 554.**

UNSTAMPED DOCUMENT—Rejection of—Tender of Penalty and Duty.

See **Stamp. 7.**

CHAMPABATY *v.* BIBI JIBUN... **I. L. Rep. 4 Cal. 213.**

UNSTAMPED PROMISSORY NOTE—Suit on—Evidence of Consideration.

See **Evidence. 4.**

GOLAB CHAND *v.* THAKURAN MOHOKOOM.....**I. L. Rep. 3 Cal. 314.**

UNSUCCESSFUL APPLICATION FOR LEAVE TO SUE IN FORMA PAUPERIS NOT A DEMAND BY WAY OF ACTION, OF DOWER.

See **Mahomedan Law—Dower. 1.**

RANEE KHAJOOROONISSA *v.* RANEE RYEESOONISSA ... **L. Rep. 2 I. A. 235.**

URAIMA RIGHT—ALIENATION OF.

See **Alienation of Right of Management of a Pagoda.**

RAJAH VURMAH VALIA *v.* RAVI VURMAH MUTHA...**L. Rep. 4 I. A. 76.**

URALLERS — Alienation by — of *Uraima* Rights.

See **Alienation of Right of Management of a Pagoda.**

RAJAH VURMAH VALIA *v.* RAVI VURMAH MUTHA...**L. Rep. 4 I. A. 76.**

USER—Easement.

See the Cases under **Easement.**

—— Evidence of—to explain Grant.

See **Right of Fishery in Public Navigable River.**

PROSONNO COOMAR *v.* RAM COOMAR...**I. L. Rep. 4 Cal. 53. 55.**

See **Construction of Sanad. 1.**

RAVJI *v.* DADAJI... **I. L. Rep. 1 Bom. 523, 527.**

USUFRUCTUARY MORTGAGE.

See **Mortgage. 12. 27. 28. 36. 41.**

—— Decree for Redemption of—though Mortgagor's Allegation of Satisfaction of Mortgage not proved.

See **Mortgage. 36.**

SAHIB ZADAH *v.* PARMESHAR DAS. **I. L. Rep. 1 All. 524.**

—— Mortgage by Conditional Sale.

See **Mortgage. 12.**

THUMBASAWMY *v.* MAHOMED HOSSAIN...**L. Rep. 2 I. A. 241.**

Digitized by Google

USURIOUS RATE OF INTEREST.

See **Unconscionable Bargain.**

See **Hindu Law—Undivided Family. 7.**

LUCHMI DAI KOORI *v.* ASMAN SINGH.....**I. L. Rep. 2 Cal. 213.**

VACATION—Limitation expiring during—Presentation of Plaint on Re-opening of Court.

See **Limitation. 6.**

BISHAN CHAND *v.* AHMAD KHAN... **I. L. Rep. 1 All. 263.**

—— Limitation for Suit for Arrears of Rent, expiring during — Presentation of Plaint on Reopening of Court, too Late.

See **Limitation. 13.**

PURRAN CHUNDER *v.* MUTTY LAL... **I. L. Rep. 4 Cal. 50.**

——Time for Deposit of Costs of Appeal to Privy Council expiring during.

See **Act VI. of 1874, § 8.**

LALLA GOPEE CHAND...**I. L. Rep. 2 Cal. 128.**

VAGUENESS OF CHARGE—False Evidence.

See **Criminal Procedure Code, Act X. of 1872, § 471. 2.**

REG. *v.* BAIJOO LALL...**I. L. Rep. 1 Cal. 450.**

—— As to Particular Direction of Law disobeyed—Penal Code, § 217.

See **Charge. 1.**

IMPX. *v.* BABAN KHAN...**I. L. Rep. 2 Bom. 142.**

—— Penal Code, §§ 292, 294.

See **High Court Criminal Procedure, Act X. of 1875, § 147. 4,** and *see* **Charge. 2.**

REG. *v.* UPENDRONATH DOSS... **I. L. Rep. 1 Cal. 356.**

VAKALATNAMA—*Stamp Act XVIII. of 1869, Sched. II.*] If a pleader is authorized by the *vakalatnama* under which he acts to receive monies or documents for his client in the course of the cause which he is empowered to conduct, or as a consequence of the decree or any order of the Court in such a cause, a Court of Justice might legally and with propriety direct a public officer to pay money or make over valuable documents to the pleader, though he has not been authorized by a power of attorney bearing the stamp prescribed in Act XVIII. of 1869, Sched. II., to receive on behalf of his client such money or valuable documents, provided that such money or documents have become receivable by the client in the ordinary course of the suit, or in consequence of the order or decree. ANONYMOUS. *Garth*, C.J., *Jackson* and *Ainslie*, JJ.....**I. L. Rep. 3 Cal. 767, 1878.**

VAKIL—Special Agreement with—for Reward in event of Success, proportioned to Amount Decreed.

See **Inam Chitti.**

RAMCHANDRA *v.* KALU..**I. L. Rep. 2 Bom. 362.**

VALIDITY OF AWARD FOUNDED ON EVIDENCE TAKEN ON OATH ILLEGALLY ADMINISTERED.

See **Oaths Act X. of 1873, §§ 8, 10, 13.**

WALI-UL-LA *v.* GHULAM ALI.....**I. L. Rep. 1 All. 535.**

VALUATION OF SUIT—By Plaintiff under Cl. iv. of § 7 of Act VII. of 1870—Revision of, by Judge.

See **Court Fees. 2.**

MANOHAR *v.* BAWA RAMCHARANDAS...**I. L. Rep. 2 Bom. 219.**

—— For purposes of Jurisdiction.

See **Jurisdiction. 19. 20.**

BAI MAKHOR *v.* BULAKHI...**I. L. Rep. 1 Bom. 538.**

KALU *v.* VISHRAM ... **I. L. Rep. 1 Bom. 543.**

See MANOHAR *v.* BAWA RAMCHARANDAS **I. L. Rep. 2 Bom. 219. 229.**

—— For purposes of Stamp Duty—Appeal.

See **Appeal to the Privy Council. 1.**

BABOO LEKRAJ ROY *v.* KANAYA SINGH ... **L. Rep. 1 I. A. 317.**

See **Practice—Privy Council. 6.**

KRISTO I. SAHA *v.* HURROMONEE.. **L. Rep. 1 I. A. 84.**

Digitized by Google

VALUE OF INTEREST CREATED IN IMMOVEABLE PROPERTY—COMPUTATION OF, FOR REGISTRATION PURPOSES — Present Value of Interest created, and Amount of Consideration stated in Document, irrespective of Future Profits or Interest, measures Necessity to Register.

See **Registration. 1. 7. 8. 9. 16. 17. 18. 20.**

KARAN SINGH *v.* RAM LAL...**I. L. Rep. 2 All. 96.**

SATRA *v.* VISRAM...**I. L. Rep. 2 Bom. 97.**

NANA *v.* ANANT.....**Ibid. 353.**

SHANKAR *v.* VISHNU...**I. L. Rep. 1 Bom. 67.**

NARSAPA *v.* GURUVAPA.....**I. L. Rep. 1 Mad. 378.**

RAM D. KOOER *v.* THACOOR ROY... **I. L. Rep. 4 Cal. 61.**

AHMED BAKSH *v.* GOBINDI...**I. L. Rep. 2 All. 216.**

Contra, see **Registration. 19. 21.**

RAJPATI *v.* RAM SUKHI...**I. L. Rep. 2 All. 49.**

DARSHAN SING *v.* HANWANTA... **I. L. Rep. 1 All. 274.**

VARIANCE BETWEEN WRITTEN STATEMENT AND PROOF—*Act VIII. of* 1859, § 123]. Section 123 of Act VIII. of 1859 contemplates that a defendant shall, in his written statement, set forth the case he intends to make at the trial.

The rule laid down in *Eshenchunder Singh* v. *Shamchurn Bhutto* (11 Moo. I. A. 20-24) and *Mahomed Yahoor Ali Khan* v. *Musst. Thakooranee Ratta Koer* (11 Moo. I. A. 468-473), that the state of facts, and the equities and ground of relief originally alleged and pleaded by the plaintiff, shall not be departed from, and that a plaintiff is not entitled to relief on facts or documents not stated or referred to by him in his pleadings, is equally applicable to a defendant. Where, therefore, a defendant, in a suit in ejectment, averred in his written statement that the land in dispute was in fact his, but had previously to 1865 been encroached on by the plaintiff, who in 1865 was about to build upon it; and that the defendant then, in order to avoid litigation, compromised the dispute by paying the plaintiff a sum of money, and purchased the land, and had since then remained in possession :—

VARIANCE BETWEEN WRITTEN STATEMENT AND PROOF—*contd.*

Held, that the defendant could not be allowed at the trial to prove a case of continuous user and possession adverse to the plaintiff's commencing before 1865. CHOVA KARA *v.* ISA BIN KHALIFA. *Marriott*, J.....**I. L. Rep. 1 Bom. 209, 1876.**

VARIANCE BETWEEN MEMORANDUM OF ASSOCIATION AND PROSPECTUS OF COMPANY.

See **Agreement to take Shares.**

ANANDJI VISRAM *v.* NARIAD S. AND W. CO.....**I. L. Rep. 1 Bom. 320.**

VARIANCE BETWEEN PLAINT AND PROOF.

See **Suit for Confirmation of Possession. 1.**

TERIETPUT *v.* GOSSAIN SADERSAN. **I. L. Rep. 4 Cal. 46.**

RAM DOOLARY *v.* THACOOR ROY... **Ibid. 61, p. 63.**

VARIANCE BETWEEN PLEADING AND PROOF.

See **Estoppel. 3.**

GOUR MONEE *v.* KRISHNA CHUNDER...**I. L. Rep. 4 Cal. 397.**

See **Land Tenures in Kanara.**

BHASKARAPA *v.* COLLECTOR OF KANARA.....**I. L. Rep. 3 Bom. 452.**

VARIATION OF ASSESSMENT DOES NOT AFFECT PROPRIETARY RIGHT.

See **Bombay Act I. of 1865, § 35.**

COLLECTOR OF THANA *v* DADABHAI.....**I. L. Rep. 1 Bom. 353.**

VARYING DECREE FOR MAINTENANCE.

See **Multiplicity of Suits. 2.**

SIDLINGAPA *v.* SIDAVA.....**I. L. Rep. 2 Bom. 624. 630.**

See **Hindu Law—Maintenance of Widow. 10.**

RUKA BAI *v.* GAUDA BAI...**I. L. Rep. 1 All. 594.**

Digitized by Google

VATANDAR JOSHI—Right of—to recover Damages from Intruder on his Office.

See **Disturbance of Office. 2.**

RAJA SHIVAPPA *v.* KRISHNABHAT.

I. L. Rep. 3 Bom. 232.

VENDOR—Absence of—Registration.

See **Registration. 2.**

SAH MAKHUN *v.* SAH KOONDUN...

L. Rep. 2 I. A. 210.

VENDOR'S LIEN FOR UNPAID PURCHASE-MONEY.

See **Vendor and Purchaser. 1.**

TRIMALRAV *v.* THE MUNICIPAL COMMISSIONERS OF HUBLI...

I. L. Rep. 3 Bom. 172.

VENDOR AND PURCHASER—Title by Estoppel.

See **Sale in Execution of Decree. 19.**

ALUKMONEE *v.* BANEE MADHUB...

I. L. Rep. 4 Cal. 677.

1. —— *Sale of Immoveable Property—Possession—Non-Payment of Purchase-Money—Lien—Vendor's Remedy.*] A vendor of immoveable property who has given possession to the purchaser, cannot rescind the contract and recover possession of the house because the balance of the purchase-money is not paid. He has a lien on the house for the unpaid purchase-money, and his remedy is to sue the purchaser for the balance. TRIMALRAV RAGHAVENDRA *v.* THE MUNICIPAL COMMISSIONERS OF HUBLI. *Melvill* and *Kemball*, JJ. **I. L. Rep. 3 Bom. 172, 1878.**

2. —— *Act XIX. of* 1873, §§ 43, 83 *and* 241, *Cl.* 5—*Assessment, Agreement to pay—Cause of Action—Right to Sue—Jurisdiction of Civil and Revenue Courts.*] The purchaser of a certain estate paying revenue to Government agreed with the vendors, shortly after the sale, that they should retain a certain portion of such estate free of rent, and that he would pay the revenue payable in respect of such portion. In 1853, in a suit by the vendors against the purchaser to enforce this agreement, the Sudder Court held that the revenue payable in respect of such portion of the estate was payable by the purchaser. In 1875, on a fresh settlement of the estate, the representatives in title of the purchaser applied to the settlement officer to settle such portion of the estate with the representative in title of the vendors. The settlement officer refused this application, but it was subsequently allowed by the revenue authorities. The representative in title of the vendors then sued the representatives in title of the purchaser in the Civil Court, claiming "that he might, in accordance with the agreement between the vendors and the purchaser, be exempted from paying the revenue in respect of such portion, as against the defendants, without any injury to the Government: that the defendants might be ordered to pay, as heretofore, such revenue; and that the defendants might be ordered never to claim or demand from him any revenue they might be compelled to pay in respect of such portion":—

Held by *Spankie*, J., that assuming that the agreement between the vendors and the purchaser was enforceable, the act of the defendants in moving the settlement officer to settle such portion of the estate with the plaintiff gave the latter a cause of action. And that, the object of the plaintiff's suit being to obtain a declaration that, as between him and the defendants, the latter were bound to pay revenue in respect of such portion, the suit was not barred by Act XIX. of 1873, § 241.

Held, also, that though the revenue authorities might regard the decision of the Sudder Court as binding on the parties then before the Court for the currency of the then settlement, that decision, that settlement having expired, and § 83 of Act XIX. of 1873 having come into force, could not control the power of the revenue authorities to settle the land in question with the plaintiff, who was its proprietor.

Held by *Oldfield*, J., that with reference to §§ 43 and 83 of Act XIX. of 1873, the Civil Courts could not relieve the plaintiff of his liability to pay revenue.

Held by the Court, that in the absence of proof that the agreement by the purchaser was intended to extend beyond the period of the settlement then current, and that it was binding on his representatives in title, the plaintiff could not obtain the declaration he sought. HIRA LAL *v.* GANESH PRASAD...**I. L. Rep. 2 All. 415, 1879.**

VESTED INTEREST.

See **Will. 9.**

C. M. HUNTER...**I. L. Rep. 4 Cal. 420.**

—— Gift of Residue to a Class—Postponement of Period of Distribution.

See **Will. 4.**

MASEYK *v.* FERGUSSON... **I. L. Rep. 4 Cal. 304.**

Digitized by Google

VESTED INTEREST—*contd.*

—— Of Members of Joint Hindu Family (Mitakshara), Nature of.

See **Hindu Law—Partition. 11.**

RAGHUBANUND *v.* SADHU CHURN. **I. L. Rep. 4 Cal. 425.**

VILLAGE ACCOUNTANT — Hushing up Charge of Theft.

See **Penal Code, § 217.**

RAMNIHI NAYAR...**I. L. Rep. 1 Mad. 266.**

VILLAGE ADMINISTRATION PAPER — Attestation of — by Lessee of Owner.

See **Pre-emption. 10.**

CHADAMI LAL *v.* MUHAMUD BAKSH...**I. L. Rep. 1 All. 563.**

—— Claim of Right of Pre-emption founded on Special Agreement recorded in.

See **Pre-emption. 10,** *ut supra.* **12.**

MARATIB ALI *v.* ABDUL HAKIM... **I. L. Rep. 1 All. 567.**

—— Entry in—Trust.

See **Trust. 1. 2.**

KAMAL SINGH *v.* BATUL FATIMA. **I. L. Rep. 2 All. 460.**

HARBAJ *v.* GUMANI...**Ibid. 493.**

VILLAGE GRAZING-GROUNDS—Right to graze Cattle on.

See **Right of Free Pasturage.**

COLLECTOR OF THANA *v.* BAL PATEL...**I. L. Rep. 2 Bom. 110.**

VILLAGE MUNSIFF'S PEON—Hushing up Charge of Theft.

See **Penal Code, § 217.**

RAMNIHI NAYAR...**I. L. Rep. 1 Mad. 266.**

VILLAGE MUNSIFF——A village Munsiff is in the Madras Presidency a Magistrate within the meaning of § 26 of the Evidence Act I. of 1872. EMPRESS *v.* RAMANJIYAN...**I. L. Rep. 2 Mad. 5.**

VILLAGE PRIEST—Suit by—against a *Yajman.*

See **Right to Sue. 13.**

DINANATH *v.* SADASHIV.....**I. L. Rep. 3 Bom. 9.**

VIRAMITRODAYA—Authority of.

See **Hindu Law — Authority of Writers. 3.**

DHONDU GURAV *v.* GANGABAI..... **I. L. Rep. 3 Bom. 369.**

VIS MAJOR.

See **Maintenance of Bund.**

RAM LALL *v.* LILL DHARY...**I. L. Rep. 3 Cal. 776.**

VOID AGREEMENT.

See **Contract. 17. 17a.**

OAKES & Co. *v.* JACKSON...**I. L. Rep. 1 Mad. 134.**

VAITHELINGA *v.* SAMINADA...**I. L. Rep. 2 Mad. 44.**

—— Agreement without Consideration.

See **Contract. 6.**

MANNA LAL *v.* BANK OF BENGAL... **I. L. Rep. 1 All. 309.**

—— Illegal Consideration.

See **Consideration. 1.**

FATEH SINGH *v.* SANWAL SINGH... **I. L. Rep. 1 All. 751.**

VOID BEQUEST—Gift to Class, some of whom not in Existence at Testator's Death.

See **Hindu Law—Will. 4.**

KHERODEMONEY *v.* DOORGAMONEY. **I. L. Rep. 4 Cal. 455.**

—— Uncertainty.

See **Will. 7.**

DWARKANATH *v.* BARRODA PERSAUD...**I. L. Rep. 4 Cal. 443.**

—— Uncertainty—Power to Executor to lay out so much as he may think fit on Erection of Bathing-Ghaut and Temples.

See **Hindu Law—Will. 3.**

SURBO MUNGOLA *v.* MOHENDRONATH.....**I. L. Rep. 4 Cal. 508.**

VOLUNTARILY ASSISTING IN CONCEALING STOLEN PROPERTY.

See **Conviction on Several Charges. 2.**

EMPRESS *v.* RAMESHAR RAI...**I. L. Rep. 1 All. 379.**

Digitized by Google

VOLUNTARILY CAUSING HURT—*Penal Code*, § 323.] Where the accused intentionally struck another who was suffering from diseased spleen, but not intending to cause his death, or such bodily injury as was likely to cause his death, or the knowledge that the person struck was so suffering, and that by his act he was likely to cause his death, and by his act caused the death of such person:—

Held, that he was properly convicted under § 323 of the Penal Code.

EMPRESS *v.* FOX...**I. L. Rep. 2 All. 522, 1879.**

S. C. under **Penal Code, § 304.**

VOLUNTARILY CAUSING GRIEVOUS HURT.

See **Compounding Offences. 6.**

REG. *v.* RAHIMAT.....**I. L. Rep. 1 Bom. 147.**

VOLUNTARY CONVEYANCE BY INSOLVENT—*Stat.* 11 *and* 12 *Vict.*, *C.* 21, §§ 21, 24, 26, 32—*Fraudulent Preference.*] Until the bankruptcy or insolvency of a debtor takes legal effect, he does not act voluntarily in the sense of giving a fraudulent preference, where he simply pays a debt that is really due, at the request, in good faith, of a particular debtor.

Where, two days before a person was adjudicated an insolvent, and his property had by order vested in the Official Assignee, under the provisions of the Indian Insolvent Act, Stat. 11 and 12 Vict., C. 21, such person had not spontaneously, but in consequence of being pressed, assigned to a particular creditor certain property:—

Held by *Stuart*, C.J., that such assignment was not "voluntary" within the meaning of § 24 of that Act, and, therefore, was not fraudulent and void, as against the Official Assignee.

By *Pearson*, J., that the assignment was not a voluntary one in the sense of having been made spontaneously, without pressure, but as the vesting order was not passed in consequence of any petition filed by the insolvent for his discharge, § 24 of the Indian Insolvent Act was, apparently, not relevant to the case. SHEO PRASAD *v.* MILLER.....**I. L. Rep. 2 All. 474, 1879.**

VOLUNTARY PAYMENT.

See **Sale in Execution of Decree. 17.**

RAM TUHUL *v.* BISSESWAR LALL.... **L. Rep. 2 I. A. 131.**

See **Setting aside Sale of Superior Tenure, Effect of.**

SREENARAIN BAGCHEE *v.* SMITH. **I. L. Rep. 4 Cal. 807.**

VOLUNTARY PAYMENT—*contd.*

—— Of Government Revenue by Person Wrongfully in Possession—Right to recover.

See **Right to recover Government Revenue paid during Wrongful Possession.**

TILUCK CHAND *v.* SOUDAMINI DASI. **I. L. Rep. 4 Cal. 566.**

—— Payment by Mortgagee of *Patni* Taluk to prevent Sale for Arrears of Government Revenue or Zemindari Rent is not a.

See **Co-Sharers of Patni Taluk.**

MOHESH CHUNDER *v.* RAM PURSONO.....**I. L. Rep. 4 Cal. 539.**

WAIVER.

—— Of Default.

See **Limitation. 30.**

GUMMA *v.* BHIKU...**I. L. Rep. 1 Bom. 125.**

—— Of Objection to Jurisdiction.

See **Appeal—Civil. 3.**

BAI MAKHOR *v.* BULAKHI...**I. L. Rep. 1 Bom. 538.**

—— Of Plea of Limitation.

See **Limitation. 3.**

MORU *v.* GOPAL.....**I. L. Rep. 2 Bom. 120.**

WAIVER OF IRREGULARITY—At Execution Sale, by Judgment-Debtor.

See **Sale in Execution of Decree. 18.**

GIRDHARI *v.* HURDEO NARAIN...**L. Rep. 3 I. A. 230.**

WAIVER OF IRREGULARITIES BY PRISONER.

See **Disqualifying Interest of Judge.**

REG. *v.* BHOLANATH SEN.....**I. L. Rep. 2 Cal. 23.**

WAJIB-UL-ARZ.

See **Village Administration Paper.**

WAKF—Joint *Mutuwalli*—Survivor—Right of Beneficiaries to Sue.

See **Mahomedan Law—Wakf.**

PHATE SAHEB *v.* DAMODAR...**I. L. Rep. 3 Bom. 84.**

Digitized by Google

WANT OF REASONABLE AND PROBABLE CAUSE.

See **Act XVIII. of 1850. 2.**

COLLECTOR OF SEA CUSTOMS, MADRAS, *v.* PUNNIAR CHITHAMBARAM.....**I. L. Rep. 1 Mad. 89.**

See **Champerty. 2.**

RAM COOMAR *v.* CHUNDER CANTO. **L. Rep. 4 I. A. 23 ; I. L. Rep. 2 Cal. 233.**

WARRANT—Issued in Foreign Territory.

See **Criminal Procedure Code, Act X. of 1872, § 157.**

REG. *v.* LOCHA.....**I. L. Rep. 1 Bom. 340.**

WARRANTY.

See **Master and Servant. 1.**

MACGILLIVRAY *v.* JOKAI ASSAM TEA CO...**I. L. Rep. 2 Cal. 33.**

—— Breach of—of Quality—Right to rescind Contract for Sale of Goods.

See **Sale of Goods.**

SHOSHI MOHUN *v.* NOBO KRISHTO. **I. L. Rep. 4 Cal. 801.**

——Implied—Sale by Sample.

See **Sale of Goods.**

SHOSHI MOHUN *v.* NOBO KRISHTO...**I. L. Rep. 4 Cal. 801.**

WARRANTY OF TITLE.

See **Sheriff's Sale. 4.**

BEJANJI *v.* HORMASJI...**I. L. Rep. 2 Bom. 258.**

WASHERMAN—Not an Artizan.

See **Madras Act III. of 1871.**

POONEN.....**I. L. Rep. 1 Mad. 174.**

WASTE LAND.

See **Rights of Mirasdars.**

FAKIR MUHAMMAD *v.* TIRUMALA CHARIAR.....**I. L. Rep. 1 Mad. 205.**

WASTE—Suit by Reversioner to restrain—by Widow in Possession, and for Declaration of Title—Consequential Relief.

See **Declaratory Decree. 2.**

KATHAMA NATCHIAR *v.* DORASINGA TEVER...**L. Rep. 2 I. A. 169.**

WATANDAR—Representative.

See **Declaratory Decree. 17.**

CHINTO *v.* LAKSHMIBAI.....**I. L. Rep. 2 Bom. 375.**

WATANDAR FAMILY—Sole Representative of—Right to officiate as.

See **Declaratory Decree. 18.**

KHANDO *v.* APPAJI...**I. L. Rep. 2 Bom. 370.**

WATER—Escape of—Damage.

See **Maintenance of Bund.**

RAM LALL *v.* LILL DHARY...**I. L. Rep. 3 Cal. 776.**

See **Tanks.**

MADRAS RAILWAY CO. *v.* ZEMINDAR OF CARVATENAGARUM... **L. Rep. 1 I. A. 364.**

—— Right to Flow of—Obstruction.

See **Riparian Proprietors. 1.**

KALI KISHEN *v.* JADAO LALL... **L. Rep. 6 I. A. 190.**

—— Right to Flow of—through an Artificial Watercourse.

See **Artificial Watercourse.**

RAMESHUR PERSHAD *v.* KOONJ BEHARI...**L. Rep. 6 I. A. 33 ; L. Rep. 4 App. Ca. 121 ; I. L. Rep. 4 Cal. 633.**

See **Easement. 4.**

MORGAN *v.* KIRBY...**I. L. Rep. 2 Mad. 46.**

WATERCOURSE—Artificial—Right to the Flow of Water—Right to Scour.

See **Artificial Watercourse.**

RAMESHUR PERSHAD *v.* KOONJ BEHARI...**L. Rep. 6. I. A. 33 ; L. Rep. 4 App. Ca. 121 ; I. L. Rep. 4 Cal. 633.**

WATER SUPPLY—Causing Unauthorized Diminution of.

See **Penal Code, § 430.**

RAMAKRISHNA *v.* PALANIYANDI... **I. L. Rep. 1 Mad. 262.**

WELLS—Sinking—and Planting Trees, contrary to Condition in Lease.

See **Forfeiture. 1.**

ABLAKH RAI *v.* SALIM AHMAD KHAN ... **I. L. Rep. 2 All. 437.**

Digitized by Google

WEST INDIA ESTATES—Lien of Manager of.

See **Mortgage. 22.**

MORAN *v.* MITTU BIBEE...**I. L. Rep. 2 Cal. 58.**

WHARFINGER—Common Carrier—Bill of Lading, Exception in—Loss by Fire.

See **Bill of Lading.**

CHIN HONG & Co. *v.* SENG MOH & Co.....**I. L. Rep. 4 Cal. 736.**

WHIPPING ACT VI. OF 1864, §§ 2 & 3—*Theft—Dishonestly Receiving Stolen Property—Act X. of* 1872, § 505—*Security for Good Behaviour.*] *P.* was convicted by a Magistrate of the First Class of dishonestly receiving stolen property. He confessed on his trial that he had been twice previously convicted of theft. He was sentenced to be whipped and to suffer rigorous imprisonment, and the Court directed that on the expiration of the term of imprisonment he should furnish security for good behaviour.

Held, that the offence of theft not being the same as that of dishonestly receiving stolen property, the sentence of whipping was illegal.

Though doubting whether the Magistrate had adduced before him such evidence as to general character as justified his dealing with the accused under § 505 of Act X. of 1872, as a person known by repute to be a thief or receiver of stolen property, yet under the circumstances the Court refused to interfere with the order for security for good behaviour; but *held*, that such order should not have been part of the sentence for the offence of which the accused was convicted. There should have been a proceeding drawn out representing that the Magistrate, from the evidence as to general character adduced before him, was satisfied that the accused was by repute an offender within the terms of § 505 of Act X. of 1872, and therefore security would be required of him, and an order should have been recorded to the effect that on the expiration of the term of imprisonment the accused should be brought up for the purpose of being bound. EMPRESS *v.* PARTAB. *Spankie*, J....**I. L. Rep. 1 All. 666, 1878.**

—— § 7—*Illegality of Sentence.*] A sentence of whipping passed on a person who is already under sentence of death, or transportation, or penal servitude, or imprisonment for more than five years, is illegal. If the sentence of whipping precede the other sentence, it may have been a legal sentence, but the subsequent sentence of death or transportation, &c., would render the infliction of the punishment illegal. ANON.....**I. L. Rep. 1 Mad. 56, 1876.**

WHOLE CAUSE OF ACTION—Arises at Place of Contract or its Performance.

See **Jurisdiction. 14.**

MUHAMMAD ABDUL KADUR *v.* E. I. RY. CO...**I. L. Rep. 1 Mad. 375.**

WIDOW—Adoption by.

See the Index heading **Adoption by Widow.**

—— Alienation by.

See the Index heading **Alienation by Widow.**

—— Childless—Right of—to Inherit.

See **Hindu Law — Inheritance — Daughters. 2. 3.**

AMRITOLAL *v.* RAJONEEKANT...**L. Rep. 2 I. A. 113.**

UMA DEVI *v.* GOKOOLANAND...**L. Rep. 5 I. A. 40; I. L. Rep. 3 Cal. 587.**

—— Childless—of Parsi.

See **Act XXI. of 1865, § 5.**

M. K. DAVUR *v.* MITHIBAI...**I. L. Rep. 1 Bom. 506.**

—— Decree against Hindu—when binds Reversioner.

See **Res Judicata. 17.**

BRAMMOYE DOSSEE *v.* KRISTO MOHUN...**I. L. Rep. 2 Cal. 222.**

—— Estate of.

See **Hindu Law — Inheritance — Widow.**

See **Jain Law. 2.**

SHEO SINGH RAI *v.* MUSSUMUT DAKHO..... **L. Rep. 5 I. A. 87; I. L. Rep. 1 All. 688.**

—— Gift by Hindu.

See **Hindu Law—Gift. 3.**

RUDR NARAIN SINGH *v.* RUP KUAR. **I. L. Rep. 1 All. 734.**

Digitized by Google

WIDOW—*contd.*

—— Hindu — Right of Residence in Family House.

See **Hindu Law—Widow's Right of Residence in Family House.**

GAURI *v.* CHANDRAMANI.....**I. L. Rep. 1 All. 262.**

—— Incontinence of Hindu.

See the Index heading **Incontinence.**

—— Mahomedan—Right of—to the Return.

See **Mahomedan Law—Inheritance—Return.**

MAHOMED ARSHAD CHOWDHRY *v.* SAJIDA BANOO...**I. L. Rep. 3 Cal. 702.**

—— Maintenance of.

See **Hindu Law—Maintenance of Widow.**

—— Remarriage of Hindu.

See **Hindu Law — Remarriage of Widow.**

MURUGAYI *v.* VIRAMAKALI...**I. L. Rep. 1 Mad. 226.**

—— Right of Hindu—to enforce Partition.

See **Hindu Law—Partition. 3.**

SOUDAMONEY *v.* JOGESH CHUNDER...**I. L. Rep. 2 Cal. 262.**

—— Waste by—Suit by Reversioner to restrain—and for Declaration of Title — Consequential Relief.

See **Declaratory Decree. 2.**

KATHAMA NATCHIAR *v.* DORASINGA TEVER...**L. Rep. 2 I. A. 169.**

WIDOW'S ESTATE—Among Jains.

See **Jain Law. 2.**

SHEO SINGH RAI *v.* MUSSUMUT DAKHO...**L. Rep. 5 I. A. 87; I. L. Rep. 1 All. 688.**

—— Forfeiture of.

See the Index heading **Incontinence.**

See **Hindu Law—Forfeiture of Widow's Estate.**

—— Sale of—in Execution of Personal Decree against a Hindu Widow.

See **Personal Decree against a Hindu Widow.**

BAIJUN DOOBEY *v.* BRIJ BHOOKUN. **L. Rep. 2 I. A. 275.**

WIDOW'S ESTATE—*contd.*

See **Sale in Execution of Decree. 19.**

ALUKMONEE *v.* BANEE M. CHUCKERBUTTY...**I. L. Rep. 4 Cal. 677.**

WIDOW OF SEPARATED PATERNAL UNCLE POSTPONED TO SISTER OF DECEASED.

See **Hindu Law—Inheritance—Sister.**

MAHANTAPA *v.* NILGANGAWA... **I. L. Rep. 3 Bom. 368, n.**

WIFE.

See the Index heading **Husband and Wife.**

WILL.

See **Mahomedan Law. 2.**

RANEE KHAJOOROONISSA *v.* ROUSHAN JEHAN.....**L. Rep. 3 I. A. 291; I. L. Rep. 2 Cal. 184.**

—— Act I. of 1869, § 2.

See **Oudh Proclamation of 1858, para. 8, 1.**

HURPURSHAD *v.* SHEO DYAL... **L. Rep. 3 I. A. 259.**

—— Absolute Gift—Construction.

See **Will. 2.**

—— Acknowledgment of Signature by Testator.

See **Indian Succession Act X. of 1865, §. 50, Cl. 3.**

MANICKBAI *v.* HORMASJI...**I. L. Rep. 1 Bom. 547.**

—— Annuity.

See **Probate Duty. 1.**

Last Will of RAMCHANDRA LAKSHMAN...**I. L. Rep. 1 Bom. 118.**

See **Court Fees. 9.**

In the Goods of RUSHTON...**I. L Rep. 3 Cal. 736.**

—— Attestation of—No Particular Form Necessary.

See **Indian Succession Act X. o 1865, § 50.**

In the Goods of ROYMONEY DOSSEE...**I. L. Rep. 1 Cal. 150**

—— Attestation of Hindu—Unnecessary.

See **Hindu Law—Will. 3.**

RADHABAI *v.* GANESH...**I. L. Rep. 3 Bom. 7.**

Digitized by Google

WILL—*contd.*

—— Attestation of—by Signature Necessary—Mark Insufficient.
See **Indian Succession Act X. of 1865, § 50, Cl. 3.**
FERNANDEZ *v.* ALVES...**I. L. Rep. 3 Bom. 382.**

—— Bequest to Class some of whom not in Existence at Testator's Death.
See **Hindu Law—Will. 4.**
KHERODEMONEY *v.* DOORGAMONEY. **I. L. Rep. 4 Cal. 455.**
And *see* TREEPOORASOONDERY *v.* DEBENDRONATH...**I. L. Rep. 2 Cal. 45, p. 53.**

—— Bequest to a Class—Remoteness.
See **Hindu Law—Will. 7.**
SOUDAMONEY *v.* JOGESH CHUNDER...**I. L. Rep. 2 Cal. 262.**

—— Bequest to a Class—Postponement of Period of Distribution.
See **Will. 4. 5.**

—— Bequest to Person Designated—Direction to Widows to perform Adoption Ceremonies.
See **Hindu Law—Will. 6.**
NIDHOOMONI *v.* SARODA...**L. Rep. 3 I. A. 253.**

—— Bequest to Sole and Separate Use of Married Woman.
See **Married Woman's Separate Property. 2. 3.**
HURST *v.* MUSSOORIE BANK..**I. L. Rep. 1 All. 762.**
BERESFORD *v.* HURST...**Ibid. 772.**

—— Charitable Bequest—*Cy-près.*
See **Will. 11.**

—— Charitable Bequest—Uncertainty—"Surplus."
See **Will. 7.**

—— Condition in Restraint of Partition or Enjoyment.
See **Hindu Law—Will. 1.**
MOKOONDO *v.* GANESH.....**I. L. Rep. 1 Cal. 104.**

—— Condition of Residence.
See **Will. 10.**

—— Double portion.
See **Will. 5.**

WILL—*contd.*

—— Executor—Assignment of Legacy to.
See **Will. 3. 4.**

—— Executor—Estate of.
See **Executor—Estate of. 1.**
MANIKLAL *v.* MANCHERSHA...**I. L. Rep. 1 Bom. 269.**

—— Executor—Estate of—Undisposed-of Residue.
See **Executor—Estate of. 2.**
LALLUBHAI *v.* MANKUVARBAI...**I. L. Rep. 2 Bom. 388.**

—— Executors—Gift by Implication of Residue to.
See **Will. 1.**

—— Executor—Renunciation by.
See **Hindu Law—Will. 3.**
SURBO *v.* MOHENDRONATH...**I. L. Rep. 4 Cal. 508.**

—— Executor—Power of, to create Mortgage with Power of Sale.
See **Executors—Power of. 1.**
SEALE *v.* BROWN...**I. L. Rep. 1 All. 710.**

—— Executory Trust in.
See **Will. 19.**

—— Of Hindu—Attestation of.
See **Hindu Law—Will. 3.**
RADHABAI *v.* GANESH...**I. L. Rep. 3 Bom. 7.**

—— Hindu—Condition in Restraint of Partition or Enjoyment—Construction.
See **Hindu Law—Will. 1.**
MOKOONDO LALL *v.* GANESH CHUNDER...**I. L. Rep. 1 Cal. 104.**

—— Hindu—Parol, Revocation of.
See **Act I. of 1869, § 22, Cl. 4.**
MAHARAJAH PERTAB NARAIN SINGH *v.* MAHARANEE SUBHAO KOOER .....**L. Rep. 4 I. A. 228.**

—— Of Hindu Widow—Probate of.
See **Probate. 1.**
BEHARRY *v.* JUGGO...**I. L. Rep. 4 Cal. 1.**

—— Of Hindu Widow—of Lands purchased with Money granted in lieu of Maintenance or with her *Stridhan*—Valid.
See **Hindu Law—Will. 8. 9.**
NELLAI KUMARU *v.* MARAKATHAUMAL.....**I. L. Rep. 1 Mad. 166.**
VENKATA *v.* VENKATA...**Ibid. 281.**

Digitized by Google

WILL—*contd.*

—— Inconsistent Condition.

See **Hindu Law—Will. 13.**

ASHUTOSH *v.* DURGA CHURN... **L. Rep. 6 I. A. 182.**

—— Lapse.

See **Will. 5.**

—— Nuncupative.

See **Hindu Law—Will. 12.**

BHAGWAN *v.* KALA...**I. L. Rep. 1 Bom. 641.**

—— Power of Appointment—Execution of Power.

See **Will. 8.**

—— Power of Hindu Daughter succeeding to Father's Estate, to Devise it by.

See **Hindu Law — Inheritance — Daughters. 1.**

HARIBHAT *v.* DAMODARBHAT... **I. L. Rep. 3 Bom. 171.**

—— Precatory Trust—Construction.

See **Will. 6.**

—— Probate.

See the Cases collected under **Probate.**

—— Probate—Document referring to Will.

See **Probate. 5.**

In the Goods of SIR J. WEMYSS... **I. L. Rep. 4 Cal. 721.**

—— Probate Duty.

See **Probate Duty.**

—— Residue, Executors when take.

See **Will. 1.**

—— Residue, Gift to Class—Postponement of Period of Distribution.

See **Will. 4.**

—— Revocation of Hindu—by Parol.

See **Act I. of 1869, § 22, Cl. 4.**

MAHARAJAH PERTAB N. SINGH *v.* MAHARANEE SUBHAO KOOER. **L. Rep. 4 I. A. 238 ; I. L. Rep. 3 Cal. 626.**

—— Revocation of—by Second Marriage of Jew in Lifetime of First Wife.

See **Indian Succession Act X. of 1865, § 56.**

GABRIEL *v.* MORDAKAI...**I. L. Rep. 1 Cal. 148.**

WILL—*contd.*

1. —— *Executors—Residuary Estate—Express Trustee.*] If a testator appoints persons to be his executors or trustees, and directs them to do certain acts which can only be done by the owners of his residuary estate, the trustees will take such estate, although there be no express devise to them. TREEPOORASOONDERY DOSSEE *v.* DEBENDRONATH TAGORE. *Pontifex*, J...**I. L. Rep. 2 Cal. 45, 1876.**

S. C. under **Act XXVII. of 1860, § 2 ; Certificate to collect Debts. 2;** and **Limitation. 63.**

2. —— *Construction of—Absolute Gift.*] If a testator leaves a legacy absolutely as regards his estate, but restricts the mode of the legatee's enjoyment to secure certain objects for the benefit of the legatee, upon failure of such objects the absolute gift prevails. Where, therefore, a testator gave certain legacies to each of his grandsons and granddaughters, but directed that his trustees should hold the same in trust to invest the legacies to the grandsons, and during the minority of the grandsons to apply the income for the benefit of the grandsons, and after the grandsons attained twenty-one to pay them the income arising from the investments, and after the death of the grandsons to pay the said income to the wife who might survive him, for her life, and after the death of both to transfer the capital to such child or children of such grandson, as being a son or sons should attain the age of twenty-one, or being a daughter or daughters should attain that age or marry, in equal shares as tenants in common, for the absolute use and benefit of such child or children respectively, and where the testator especially provided as to the legacy left to one grandson that on the happening of certain events it should be paid to his other grandchildren :—

Held, that the gifts to the grandsons were absolute, and that the subsequent provisions were simply a qualification of the gifts for the benefit of the legatees, and that, therefore, on the death of one of the grandsons unmarried, his legal representative was entitled to the legacy left to him.

Lassence v. *Tierney* (1 M. & G. 551) and *Kellett* v. *Kellett* (L. Rep. 3 H. L. 160) followed. THE ADMINISTRATOR GENERAL OF BENGAL *v.* APCAR. *Pontifex*, J.....**I. L. Rep. 3 Cal. 553, 1878.**

Digitized by Google

WILL—*contd.*

3. —— *Devise of Immoveable Property subject to its being charged in a Particular Way—Property not charged as directed — Suit to enforce Charge — Assignment by Legatee of Legacy to Executor.*] *Y.*, by his will dated the 16th of February 1864, devised his estate known as the Ellenborough Hotel Estate to the use of his son *R.* on condition that he should, when requested by the trustee of the will, execute a mortgage of such estate to the trustee for the payment of the sum of Rs. 16,000 bequeathed in the will to the trustee on certain trusts therein mentioned. *R. H.* was appointed executor of the will, and *V.* and the Administrator General of Bengal were appointed trustees of it. By a subsequent codicil, dated 24th February 1865, the testator revoked the appointment of *V.* and the Administrator General of Bengal as trustees, and appointed the Official Trustee of Bengal as the sole trustee, and appointed *V.* to be an executor. He also gave to his daughter *C.*, the wife of *H.*, the sum of Rs. 12,000 to be paid to her out of the sum of Rs. 16,000 charged on the Ellenborough Hotel estate.

On the 2nd of March 1866, *R.* executed a mortgage of the Ellenborough Hotel Estate to *H.* and *V.* to secure the payment of the sum of Rs. 16,000, with the intention of giving effect to the condition imposed upon him by the will.

On the 20th of July 1870, *C.*, assigned by sale to *V.* the sum of Rs. 12,000 bequeathed to her, for a consideration of Rs. 8,000 by a deed which contained a power of attorney authorizing *V.* to sue for the legacy. On the 11th of February 1873, *V.* sued *R.* to enforce the mortgage of the 2nd March 1866, and the co-executor *H.* was subsequently made a co-plaintiff. The Court of first instance dismissed the suit on the ground that the plaintiff was not suing as an executor for the benefit of the estate, but to enforce the assignment of *C.*'s legacy, which was invalid. On appeal:—

Held, that the mortgage deed which formed the basis of the suit was invalid, not being in conformance with the terms of the will and codicil, and conveyed no right to the property to the plaintiff, whose suit was not maintainable.

Per Stuart, C.J.—*Semble*, that an assignment of a legacy by a legatee to an executor is invalid. VAUGHAN *v.* HESELTINE. *Stuart*, C.J., and *Oldfield*, J.....**I. L. Rep. 1 All. 753, 1878.**

WILL—*contd.*

See also on this latter point *Hurst* v. *Mussoorie Bank* (*Ibid.* 762, p. 766), where *Stuart*, C.J., says, with reference to the transaction between *C.* and *V.* above stated—"This, as remarked by me in the previous suit, was a very improper transaction on Mr. Vaughan's part, and it might have been set aside if she (*C.*) had been so minded."

4. —— *Gift of Residue to a Class—Postponement of Period of Distribution—Vesting—Act X. of* 1865, §§ 98, 101, 102.—A testator gave the residue of his real and personal estate to trustees upon trust to invest the same, and "to pay, transfer, or divide the same unto or among the children of my brothers *A.* and *B.* respectively, to be paid, transferred to, and divided among them in the proportions and at the times hereinafter mentioned; that is to say, the share of each and every son of my two brothers shall be double that of each and every daughter, and the shares of each son shall be paid to him or them respectively upon his or their attaining the age of twenty-one years, and the share of each daughter to be paid to her or them on her or their respectively attaining that age or previously marrying, with benefit of survivorship between and among all the said sons and daughters." The testator left surviving him two brothers *A.* and *B.* and a sister *C.* *A.* and *B.* both died before the eldest of the testator's nephews or nieces attained twenty-one or married. In a suit instituted by the widow and executrix of *A.* to have it declared that the bequest of the residue of the estate to the children of the brothers of the testator was void and invalid under §§ 101 and 102 of the Indian Succession Act (X. of 1865), and that she, as executrix of *A.*, was entitled to receive a one-third share of the said estate and the accumulations thereon;—*Held*, that the children of *A.* and *B.* took vested interests at birth on the death of the testator; that the period of distribution alone was postponed, and that the gifts were valid.

Semble—§ 98 of Act X. of 1865 applies only to vested interests. *Sham* v. *Hobbs* (3 Drew. 93) distinguished. MASEYK *v.* FERGUSSON. *Pontifex*, J..... **I. L. Rep. 4 Cal. 304, 1878.**

5. —— *Gift to a Class—Postponement of Period of Distribution—Lapsed Bequest—Double Portions—Act X. of* 1865, § 98.] A testator gave his residuary estate to trustees upon trust

Digitized by Google

WILL—*contd.*

to invest and "to pay, transfer, or divide the same unto, between, or among the children of my brothers *A.* and *B.* respectively, to be paid, transferred to, and divided among them in the proportions and at the times hereinafter mentioned; that is to say, the share of each and every son of my said two brothers shall be double that of each and every daughter, and the shares of each son shall be paid to him or them respectively upon his or their attaining the age of twenty-one years, and the shares of each daughter to be paid to her or them on their respectively attaining that age, or previously marrying, with benefit of survivorship between and among all the said sons and daughters." After the testator's death, and before the period of distribution arrived, a son was born to *B.*, and one of the sons of *A.* died intestate and unmarried:—

Held, 1st, the intention of § 98 of the Indian Succession Act (X. of 1865) was to assimilate the law in India to that which exists in England, and that any child of the testator's brothers who was born before the period of distribution was entitled to participate as a member of the class, and that the period of distribution in this gift was the date when any nephew or niece should attain the age of majority within the provisions of the Succession Act, or when any niece should marry, whichever event should first happen. The after-born son of *B.*, therefore, was entitled to a nephew's share, or double portion.

Held, also, that though the testator probably had the same intention in regard to the proportionate amounts to be taken in the accruing and original shares, yet this was not so clear as to amount to what the law considered a necessary implication that the testator intended the accrued share to be enjoyed by his nephews and nieces in equal proportions, and, therefore, the share of the deceased son of *A.* was divisible among the surviving male and female children in equal proportions. MASEYK *v.* FERGUSSON. *Pontifex*, J.....**I. L. Rep. 4 Cal. 670, 1878.**

6. —— *Construction — Precatory Trust.*] *W. R.*, by his will, left to his wife, *M. A. R.*, the whole of his property, including certain bank shares, "feeling confident that she would act justly to their children in dividing the same when no longer required by her." *M. A. R.*, by her will, gave certain property to each of her children, giving the plaintiff, amongst other property, the bank shares. These shares were attached in execution of a decree against the executors of *M. A R.*, as belonging to her estate.

Held, that the words of her husband's will created a trust in *M. A. R.* for the benefit of her children, and limited her own estate in the property to a mere life interest, or to the income of the property so long as she might require it; and that she was a trustee with a power of appointment over the whole property comprised in the will in favour of the children, and that the shares, therefore, belonged to the plaintiff, and could not be sold in execution of the decree as part of the estate of *M. A. R.* RAYNOR *v.* THE MUSSOORIE BANK. *Stuart*, C.J., and *Pearson*, J...
I. L. Rep. 2 All. 55, 1878.

Reversed on Appeal.—**L. R. 9. I. A. 70; L. R. 7 App. Ca. 321.**

7.——*Charitable Bequests—Void Bequests—Uncertainty—"Surplus"—General Residuary Bequest.*] A testator by his will directed as follows:—"I do hereby direct my trustee to feed the really needy and poor at Gopeenathjee out of a separate expense out of my estate to be contributed to the worship of Luckeejonardunjee, my ancestral goddess. I do direct my trustee to spend suitable sums for the annual *Sradhs* or anniversaries of my father, mother, and grandfather, as well as of myself after my demise, for the performance of the ceremonies and the feeding of the Brahmins and the poor; to spend suitable sums for the annual contributions and gifts to the Brahmins, Pundits holding *tolls* for learning in the country at the time of the Doorga Poojah; to spend suitable sums for the perusal of *Mohabharat* and *Pooran* and for the prayer of God during the month of Kartick. Should there be any surplus after the above expenditure, then I do hereby direct my trustee to spend the said surplus in the contribution towards the marriage of the daughters of the poor in my class and of the poor Brahmins, and towards the education of the sons of the poor amongst my class, and of the poor Brahmins and other respectable castes, as my trustee will think fit to comply."

Held, on appeal, affirming the decision of the Court below, that the concluding words of the above clause in the will, commencing "should there be any surplus after expenditure," &c., must be construed as creating a general residu-

Digitized by Google

WILL—*contd.*

ary bequest, which would absorb the whole of the property, even assuming that some of the preceding bequests were invalid.

Quære, whether the bequests to Pundits holding *tolls*, and for reading the *Mohabharat* and *Foorans* and for prayer to God, were valid. DWARKANATH BYSACK *v.* BURRODA PERSAUD BYSACK. *Garth*, C.J., and *Markby*, J...**I. L. Rep. 4 Cal. 443; 1 Cal. Rep. 566, 1878.**

8. —— *Power of Appointment — Execution of Power.*] A testator, after giving certain specific bequests, disposed of his property as follows:—

"After payment of the above bequests and charges of administration, I request that the interest of my property, invested in Government securities, be disposed of from time to time as follows:—*First*—To my dear son *G.* two shares; to my two dear daughters, *E.* and *C.*, each one share; the interest to be paid to them quarterly or half-yearly as may be most convenient. *Second*—I request that these shares shall not be transferable during their life-time. *Third*—At the demise of any of my children without issue any such share to be divided in the above proportion to the survivors. *Fourth*—In the event of issue, they may bequeath their share to any one of their children they may select, subject to the above conditions." *C.*, in May 1874, married, and by a settlement made in consideration of the marriage her share was assumed to be assigned to trustees upon certain trusts. In 1875, *C.* and her husband made the following joint will:—"We do hereby constitute the survivor of us to be executor or executrix in our estate, and sole heir of the same, together with the child or children begotten in our marriage." *C.* died soon after the execution of the above will, leaving one child. In a suit by *C.*'s husband and the trustees of the settlement of 1874 for administration of the testator's estate and the construction of his will:—

Held, that the settlement of 1874 could not operate on *C.*'s share, in consequence of the direction of the testator that it should not be transferred in the lifetime of *C.*, who had nothing to settle under her father's will, and that the plaintiffs consequently took nothing under the settlement.

Held, also, that the joint will was not an execution of the power of appointment given by the testator's will, for even if it referred to the power

WILL—*contd.*

or to the fund, it would have been an appointment embracing objects not designated by the power. A construction which will give the share of a child on his death to his children should be favoured, and a slight indication of such intention should be sufficient for the purpose of giving the fund to the issue of the deceased child who in his lifetime enjoyed it; and the *corpus*, therefore, of the fund, of which the interest was paid to *C.* during her life, devolved at her death on her only child. FEHRSEN *v.* SIMPSON. *Broughton*, J.....**I. L. Rep. 4 Cal. 514.**

9. —— *Vested Interest—Divesting—Executory Trust.*] *H.* died leaving a will which contained the following bequest:—"I bequeath to my daughter *A. H.*, on her attaining her eighteenth year, the sum of Company's Rs. 10,000, with any interest that may have accrued thereon; if she marries, to be settled on herself and children solely; should she die unmarried, her money to be equally divided between her brothers; and if either of them dies, the whole of deceased's money to go to the survivor."

A. H., after attaining her eighteenth year, and being still unmarried, claimed to be entitled to the legacy absolutely, and to have the principal and arrears of interest paid to her.

Held, that *A. H.* took a vested interest in the legacy, subject to be divested upon her dying at any time unmarried, and further subject to an executory trust in favour of the children in the event of her marrying at any time, and consequently that she was not entitled to have the capital of the legacy paid to her. *In the matter of the Will of* C. M. HUNTER. *White*, J...**I. L. Rep. 4 Cal. 420, 1878.**

10. —— *Devise on Condition of Residence.*] Where a devise is to determine on the devisee ceasing to use a certain house as his residence, and no manner or period of residence is prescribed, exclusive residence is not supposed to be meant; the occasional use of the house, and keeping an establishment in it with the intention of again using it as a residence, is a sufficient compliance with the condition.

Question raised as to what is a sufficient compliance with the condition of using a *Boitokhana* house as a residence.

The condition as to cesser does not arise in consequence of the devisee not using the house

Digitized by Google

WILL—*contd.*

in any sense as his residence for four years after the testator's death, where the delay can be justified by the pendency of a suit to defeat his title, and by his inability to obtain possession of the whole of the house from the trustees, and by the unfit state of the house for residence, owing to want of repairs, which were in progress. GANENDRO MOHUN TAGORE *v.* RAJAH JUTTENDRO MOHUN TAGORE...**L. Rep. 1 I. A. 387; 14 Ben. L. R. 60; 22 W. R. 377, 1874.**

11. —— *Gift to Charity which has ceased to exist—Application of* Cy-Près *Doctrine when the Residuary Bequest is also to a Charity—Scheme, Right of Residuary Legatee to question.*] *C. M.*, a Frenchman, by an English will, dated the 1st of January 1801, bequeathed his property, valued by himself at upwards of thirty lakhs, partly to individual legatees, more largely to various charitable objects, the most prominent being certain establishments at Lucknow, Calcutta, and Lyons. His estate was administered, and various questions under his will disposed of in several suits instituted for those purposes in the Supreme Court of Calcutta. Among the charitable bequests were the three following legacies:—1st, by the 28th Clause, the annual sums of Rs. 5,000 and Rs. 1,000 to be applied respectively to the discharge and relief of poor debtors detained in prison in Calcutta; 2ndly, by the 25th Clause, the annual sum of Rs. 4,000 to be paid to the Magistrates of Lyons to liberate poor prisoners detained for debt in Lyons. This fund was, before 1832, fully paid over to the Mayor and Commonalty of Lyons. 3rdly, by the 33rd Clause, the annual sum of Rs. 4,000 to be paid to liberate poor prisoners at Lucknow, but with a direction that "if none, that sum is to remain to the estate." This gift was, by a decree of the Supreme Court in 1832, declared to be void, and the residuary estate was increased by the amount which would have been required to satisfy it.

A scheme was settled in 1802 for the administration of the charities for the release and relief of poor prisoners in Calcutta comprised in the first-mentioned legacy, and funds to satisfy the same were, by orders of the Supreme Court, transferred to the credit of two separate accounts for those several purposes. The income of those funds in excess of what was required for poor prisoners at Calcutta accumulated; and in August 1865 had amounted to Rs. 3,51,000.

WILL—*contd.*

The residuary clause of the will (the 33rd) directed that "after the several payments of gift and others, as also the several establishments, if a surplus of ten lakhs remains, that above surplus is to be divided in such a manner as to increase the three establishments." On a petition by the Advocate General, without citing the appellant, the High Court, on the 3rd of August 1865, made an order (confirmed by another order of the 2nd of March 1866) under which a sum of Rs. 1,50,000 was reserved in an account for the release and relief of poor prisoners at Calcutta, as above, the income to be applied on the *cy-près* principle "in lieu and supersession of the former scheme"; and the residue of the said accumulations was divided between the Calcutta and the Lucknow Martiniére establishments. On a petition by the appellant to the [High Court, dated the 21st of June 1873, praying that it might be declared that the said gifts of Rs. 5,000 and Rs. 1,000 annually for the release and relief of poor prisoners at Calcutta had failed; that the said accumulations formed part of the residue of the testator's estate; and that the petitioner, as a residuary legatee, was entitled to a share thereof; the High Court refused the petition, holding "that the said charitable gift was an absolute charitable gift capable of being applied *cy-près*; and that the petitioner, as one of the residuary legatees under the will was not entitled to any of the funds appropriated to that gift":—

Held, by their Lordships, that this order must be affirmed.

It cannot be laid down as a general principle that the *cy-près* doctrine is invariably displaced where the residuary bequest is to charity, whatever its kind and nature may be. The principle on which the doctrine rests appears to be, that the Court treats charity in the abstract as the substance of the gift, and the particular disposition, as the mode, so that in the eye of the Court the gift, notwithstanding the particular disposition may not be capable of execution, subsists as a legacy which never fails and cannot lapse. Cases may easily be supposed where the charitable object of the residuary clause is so limited in its scope, or requires so small an amount to satisfy it, that it would be absurd to allow a large fund bequeathed to a particular charity to fall into it. And though the charitable establishments mentioned in the residuary bequest were of a compre-

Digitized by Google

WILL—*contd.*

hensive character, as well as prominent objects of the testator's bounty, and though, looking at the whole will, it was probable that the testator would have wished those establishments to have the benefit of all lapsed funds, yet, there being no express or implied gift over to them in the will, this conjecture of intention could not exclude the doctrine of *cy-près*, in considering the applicability of which, the Court looks only to the particular gift, and if it finds charity to to be the legatee, sustains the legacy as such, without regarding at this stage of the inquiry (whatever may be proper when a scheme comes to be framed) the rest of the will. The jurisdiction of the Court to act on the *cy-près* doctrine upon the failure of a specific charitable bequest arises whether the residue be given to a charity or not, unlesss upon the construction of the will a direction can be implied that the bequest, if it fails, should go to the residue. Such a direction could not be implied from the terms of the above legacies to poor prisoners in Calcutta and Lyons, especially when compared with the corresponding gift to the prisoners at Lucknow, nor could it be inferred from the residuary clause which in terms disposed of such residue as was left after providing for such legacies.

Strictly speaking, it was not competent to the appellant under his present petition, which was confined to the claim of a share of the residue as residuary legatee, to open the scheme, but the High Court having, with a view to prevent further litigation and expense, expressed an opinion that if it was proper to reform the scheme at all, it might be right to confine it to charitable objects in Calcutta excluding both Lucknow and Lyons, their Lordships, agreeing with what was said in the House of Lords, in the case of *The Ironmongers' Company*, as to the care and circumspection to be exercised by the Appellate Court in substituting its discretion for that of the Court below, would be reluctant in any case to interfere with a scheme unless it were plainly wrong, and still more to unsettle by a premature declaration one which was not regularly before them; and bearing in mind the opinions expressed in the House of Lords in the above case, that whilst regard may be had to the other objects of the testator's bounty, in construing a scheme, primary consideration is to be given to the gift which has failed, and to a search for objects akin to it, their Lordships refused to declare that the

WILL—*contd.*

scheme was necessarily bad because no part of the fund had been appropriated to the Lyons charity, as the gift to the poor prisoners in Calcutta might well be considered to have a local character, and a scheme properly framed for the benefit of other poor persons in Calcutta be supported, as being *cy-près* to the original purpose. MAYOR OF LYONS *v.* ADVOCATE GENERAL OF BENGAL.....**L. Rep. 3 I. A. 32; I. L. Rep. 1 Cal. 303; L. Rep. 1 App. Ca. 91.**

WILLA—Mahomedan Law—Heritable Rights of Slave Emancipator.

See **Act V. of 1843.**

SAYAD MIR UJMUDIN KHAN *v.* ZIA-UL-NISSA BEGAM ... **L. Rep. 6 I. A. 137; I. L. Rep. 3 Bom. 422.**

WINDING UP.

See the Cases under **Company—Winding up.**

WINDOWS—Ancient—Obstruction of.

See the Cases under **Light and Air.**

See **Mandatory Injunction.**

JAMNADAS *v.* ATMARAM.....**I. L. Rep. 2 Bom. 133.**

WITHDRAWAL OF COMPLAINT.

See **Criminal Procedure Code, Act X. of 1872, § 210.**

In re MUSE ADAM...**I. L. Rep. 2 Bom. 653.**

WITHDRAWAL OF PROSECUTION.

See **Compounding Offences.**

WITHDRAWAL OF SUIT—With Leave to institute Fresh Suit—Omission to sue for Part of Claim.

See **Civil Procedure Code, Act VIII. of 1859, § 7. 2.**

ILAHI BAKSH *v.* IMAM BAKSH... **I. L. Rep. 1 All. 324.**

WITNESS—Judge.

See **Evidence. 22.**

EMPRESS *v.* DONNELLY.....**I. L. Rep. 2 Cal. 405.**

See **Disqualifying Interest of Judge.**

REG. *v.* BHOLANATH SEN...**I. L. Rep. 2 Cal. 23.**

Digitized by Google

WITNESS—*contd.*

—— Right of—to appear by Counsel.

See **Right of Witness to appear by Counsel.**

NURSEY KESSOWJEE...**I. L. Rep. 3 Bom. 270.**

WITNESSES FOR PROSECUTION — Right of Accused to recall and cross-examine.

See **Practice—Criminal. 1.**

EMPRESS *v.* BALDEO SAHAI...**I. L. Rep. 2 All. 253.**

—— Examination of all — Necessary before Magistrate can discharge Accused.

See **Criminal Procedure Code, Act X. of 1872, § 215, 1. 2.**

EMPRESS *v.* HEMATULLA.....**I. L. Rep. 3 Cal. 389.**

EMPRESS *v.* KASHI.....**I. L. Rep. 2 All. 447.**

WORDS— "After Two Country Voyages."

See **Contract. 16.**

FLEMING *v.* KOEGLER....**I. L. Rep. 4 Cal. 237.**

—— "Last Preceding Application."

See **Civil Procedure Code, Act X. of 1877, § 230. 1.**

RAM KISHEN *v.* SEDHU.....**I. L. Rep. 2. All. 275.**

—— "In Good Faith."

See the Cases under **Act XVIII. of 1850.**

See **Hindu Law—Will. 10.**

MANIKLAL *v.* MANCHARSHA...**I. L. Rep. 1 Bom. 269.**

—— "Material Error."

See **Criminal Procedure Code, Act X. of 1872, §§ 294 and 297.**

JUGUTCHUNDER CHUCKERBUTTY... **I. L. Rep. 2 Cal. 110.**

—— "May"—"Must."

See **Construction of Statute. 1.**

DELHI AND LONDON BANK *v.* ORCHARD...**L. Rep. 4 I. A. 127; I. L. Rep. 3 Cal. 47.**

—— "Trust for any Specific Purpose."

See **Executor—Estate of. 2.**

LALLUBHAI *v.* MANKUVARBAI..... **I. L. Rep. 2 Bom. 388.**

See **Limitation. 26. 27. 38. 38a. 61.**

WORDS—*contd.*

—— "Vested in Trust."

See **Hindu Law—Will. 10.**

MANIKLAL *v.* MANCHARSHA...**I. L. Rep. 1 Bom. 269**

—— "Where there has been an Appeal."

See **Limitation. 87.**

SHEO PRASAD *v.* ANRUDH SINGH. **I. L. Rep. 2 All. 273.**

WORSHIP OF IDOL—Right of Exclusive—Right to Turn of — Limitation Act IX. of 1871, Sched. II., Arts. 118, 131.

See **Right to Worship of Idol.**

ESHAN CHUNDER *v.* MONMOHINI... **I. L. Rep. 4 Cal. 683.**

—— Right to Turn of.

See **Right to Sue. 6.**

DEBENDRONATH *v.* ODIT CHURN... **I. L. Rep. 3 Cal. 390.**

WORSHIPPER OF IDOL — Right of — to sue in respect of Breach of Trust of Idol's Property.

See **Right to Sue. 10.**

RADHABAI *v.* CHIMNAJI ..... **I. L. Rep. 3 Bom. 27.**

WRIT OF FIERI FACIAS—Sale of Mortgagor's Interest under—obtained by Mortgagee—Right of Purchaser.

See **Mortgage. 3.**

TUKARAM *v.* RAMCHANDRA...**I. L. Rep. 1 Bom. 314.**

See **Sheriff's Sale. 3.**

BHUGGOBUTTY *v.* SHAMACHURN... **I. L. Rep. 1 Cal. 337.**

WRIT OF FIERI FACIAS, SALE BY SHERIFF UNDER—Right of Purchaser at—to recover Purchase Money on Eviction on Sale being declared Void.

See **Sheriff's Sale. 1. 2.**

DORAB ALLY KHAN *v.* KHAJAH MOHEEOODDEEN....**L. L. Rep. 1 Cal. 55; I. L. Rep. 3 Cal. 806; L. Rep. 5 I. A. 116.**

WRIT OF HABEAS CORPUS—Affidavits—Right to use, on Return to.

See **Privilege from Arrest.**

OMRITOLALL DEY...**L. L. Rep. 1. Cal. 78.**

Digitized by Google

WRIT OF HABEAS CORPUS—*contd.*

—— Delay in Applying for.

See **Privilege from Arrest.**

OMRITOLALL DEY...**I. L. Rep. 1 Cal. 78.**

—— Power of High Court on return to—to inquire into Validity of Commitment by Small Cause Court.

See **Privilege from Arrest.**

See **Small Cause Court—Presidency Town. 5.**

OMRITOLALL DEY...**I. L. Rep. 1 Cal. 78.**

—— Privilege from Arrest—Decree of Small Cause Court—Affidavits.

See **Privilege from Arrest.**

See **Small Cause Court—Presidency Town. 5.**

OMRITOLALL DEY...**I. L. Rep. 1 Cal. 78.**

WRITTEN STATEMENT—Variance.

See **Variance between Written Statement and Proof.**

CHOVA KARA *v.* ISA BIN KHALIFA. **I. L. Rep. 1 Bom. 209.**

WRONGFUL CONVERSION—Measure of Damages for.

See **Damages. 4.**

BOMBAY BURMAH TRADING CORPORATION, LIMITED *v.* MIRZA MAHOMED ALLY...**I. L. Rep. 4 Cal. 117.**

WRONGFUL DISMISSAL — Suit for Damages for.

See **Master and Servant. 1.**

MACGILLIVRAY *v.* JOKAI ASSAM TEA CO....**I. L Rep. 2 Cal. 33.**

WRONGFUL DISPOSSESSION OF LESSEE BY LESSOR—Jurisdiction of Civil and Revenue Courts.

See **Act XVIII. of 1873, § 95, Cl. m.**

ABDUL AZIZ *v.* WALI KHAN...**I. L. Rep. 1 All. 338.**

WRONGFUL DISTRAINT — Suit to set Aside.

See **Right to Sue. 9.**

HORRO NARAIN *v.* SHOODHA KRISHTO...**I. L. Rep. 4 Cal. 890.**

WRONGFUL POSSESSION—Government Revenue paid during—Right to recover—Set-off—Suit for Mesne Profits.

See **Right to recover Government Revenue paid during Wrongful Possession.**

TILUCK CHAND *v.* SOUDAMINI DASI...**I. L. Rep. 4 Cal. 566.**

YAJMAN—Suit against a—by Village Priest.

See **Right to Sue. 13.**

DINANATH *v.* SADASHIV.....**I. L. Rep. 3 Bom. 9.**

YEARLY TENANT.

See **Rights of Mirasdars.**

FAKIR MUHAMMAD *v.* TIRUMALA CHARIAR...**I. L. Rep. 1 Mad. 205.**

See **Ejectment. 1.**

RAM ROTTON *v.* NETRO KALLY... **I. L. Rep. 4 Cal. 339.**

See **Landlord and Tenant. 1.**

RAJENDRONATH *v.* BASSIDER...**I. L. Rep. 2 Cal. 146.**

ZANZIBAR—Offence committed at—by British Subject—Jurisdiction of High Court at Bombay.

See **Offence committed in Foreign Territory.**

EMPRESS *v.* DOSSAJI GULAM HUSEIN...**I. L. Rep. 3 Bom. 334.**

—— *Jurisdiction of the British Consul at—Registration of British Subjects at Zanzibar—Stat. 6 and 7 Vict., C. 94—Order in Council of 9th August 1866, Stat. 39 and 40 Vict., C. 46.*] The jurisdiction of the British Consul at Zanzibar to hear and determine suits of a civil nature between British subjects, depends on the question whether the cause of action arose within the dominions of the Sultan of Zanzibar, and not upon the question whether the British subjects (between whom such causes of action arose) were resident within those dominions.

By virtue of the treaty of 1839, British subjects are liable to be sued in the British Consular Court at Zanzibar by Americans as being subjects of another Christian nation, and by convention with the Rao of Kutch, made with the acquiescence of the Sultan of Zanzibar, natives of Kutch, having been subjected to the British Consular Courts in the same manner as if they were British subjects, may be sued by Americans and others in that Court.

Digitized by Google

ZANZIBAR—*contd.*

When the British Consul at Zanzibar has permitted persons, who have not been registered as under British protection, to bring and continue suits in his Court, that circumstance must be accepted as a sufficient indication that they have excused to his satisfaction their neglect to register under Article 30 of the Order in Council of 9th August 1866.

Quære—Whether Stat. 39 and 40 Vict., C. 46, deals with the Order in Council of 9th August 1866, except so far as it relates to the slave trade. WAGJI KORJI *v.* THARIA TOPAN. *Westropp*, C.J., and *Melvill*, J...**I. L. Rep. 3 Bom. 58, 1878.**

ZEMINDAR — DEBT OF— WHETHER CHARGEABLE ON ZEMINDARY.

See **Polliem. 2.**

OOLAGAPA CHETTY *v.* ARBUTHNOT...**L. Rep. 1 I. A. 268.**

ZEMINDARI CESSES.

See **Custom. 4.**

LACHMAN RAI *v.* AKBAR KHAN... **I. L. Rep. 1 All. 440.**

ZEMINDARI CESSES—*contd.*

—— Suit for—founded on Custom not Cognizable by Small Cause Court.

See **Small Cause Court—Mofussil. 4.**

NANKU *v.* BOARD OF REVENUE... **I. L. Rep. 1 All. 444**

ZEMINDARI RENT—Right of Mortgagee to prevent Sale of Mortgaged Property for Arrears of.

See **Co-Sharers of Patni Taluk.**

MOHESH CHUNDER *v.* RAM PURSONO.....**I. L. Rep. 4 Cal. 539.**

ZEMINDARI RIGHT TO CESSES AND COLLECTIONS—Suit for a Declaration of.

See **Declaratory Decree. 8.**

AKBAR KHAN *v.* SHEORATAN... **I. L. Rep. 1 All. 373.**

Ex. L. 235
12/17.

BOMBAY: PRINTED AT THE EDUCATION SOCIETY'S PRESS, BYCULLA.

Digitized by Google

Digitized by Google

Digitized by Google

Digitized by Google

3 vols
£1/-

Digitized by Google

Digitized by Google